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May 31, 2005

**HAND DELIVER**

Mr. Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

**Re: Joint Request of KMC Telecom III LLC and CenturyTel Acquisition  
LLC--TRA Docket No. 05-00092--Response to Data Request No. 2**

Dear Mr. Miller:

In response to Data Request No. 2, outlined in a letter from Aster Adams dated May 18, 2005, enclosed are an original and thirteen (13) copies of the Asset Purchase Agreement the Petitioners entered into on February 2, 2005 (the "Asset Purchase Agreement").

**Please note that there are two versions of this document.** The first set is the "public version, which has been redacted to remove all information that the parties believe to be confidential. The second set, contained in the separate envelope, is the complete document without redaction. The parties respectfully request that this unredacted version be accorded confidential treatment by the Authority and not placed on the Authority's website or made publicly available in the Authority's docket filing room.

Please contact me if you have any question concerning these responses.

Thank you for your consideration of this matter.

Very truly yours,



George H. Masterson

GHM:ch  
Enclosure

Mr. Pat Miller, Chairman

May 31, 2005

Page 2

cc: Hon. Sara Kyle (w/o enclosures)  
Hon. Ron Jones (w/o enclosures)  
Hon. Debi Tate (w/o enclosures)  
Timothy C. Phillips, Esq. (w/ enclosures)  
Richard Collier, Esq. (w/o enclosures)  
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Richard R. Cameron, Esq. (w/ enclosures)  
Melissa S. Conway, Esq. (w/ enclosures)  
R. Dale Grimes, Esq. (w/o enclosures)

**EXECUTION COPY**

**PUBLIC VERSION**

(Confidential information redacted)

**ASSET PURCHASE AGREEMENT**

**by and among**

**KMC TELECOM HOLDINGS, INC.,  
KMC TELECOM LLC,  
KMC TELECOM II LLC,  
KMC TELECOM III LLC,  
KMC TELECOM OF VIRGINIA, INC.**

**and**

**KMC TELECOM FINANCIAL SERVICES LLC**

**as Sellers**

**and**

**CENTURYTEL ACQUISITION LLC**

**as Purchaser**

**dated as of February 2, 2005**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is entered into as of February 2, 2005, by and among KMC TELECOM HOLDINGS, INC., a Delaware corporation ("KMC Holdings"), KMC TELECOM LLC, a Delaware limited liability company ("KMC I"), KMC TELECOM II LLC, a Delaware limited liability company ("KMC II"), KMC TELECOM III LLC, a Delaware limited liability company ("KMC III"), KMC TELECOM OF VIRGINIA, INC., a Virginia corporation ("KMC VA"), and KMC TELECOM FINANCIAL SERVICES LLC, a Delaware limited liability company ("KMC FS" and, together with KMC Holdings, KMC I, KMC II, KMC III and KMC VA, the "Sellers"), on the one hand, and CENTURYTEL ACQUISITION LLC, a Louisiana limited liability company ("Purchaser") which is an indirect, wholly owned subsidiary of CENTURYTEL, INC., a Louisiana corporation ("CenturyTel"), on the other hand. Purchaser and the Sellers are sometimes referred to herein collectively as the "Parties" and each as a "Party."

### RECITALS

**WHEREAS**, the Sellers are in the business of providing competitive local exchange telephone services, long distance, high speed data, Internet access, the sale of customer premises equipment, exchange access and dedicated and special access in the Markets (as such term is defined herein) (collectively, other than as may be conducted using the Excluded Assets (as defined herein), the "Business"; and each of the foregoing services of the Business being referred to herein as a "Service" and collectively as the "Services").

**WHEREAS**, the Sellers desire to sell, convey, assign, transfer and deliver to Purchaser, and Purchaser desires to purchase and accept from the Sellers, all of the Assets (as such term is defined herein), upon the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, intending to be legally bound hereby, the Parties agree as follows:

### ARTICLE I

#### DEFINITIONS

**1.1. *Defined Terms.*** As used herein, the following capitalized terms (or derivations thereof) have the respective meanings specified or referred to in this Article I:

**"Accounts Payable"** means all accounts payable by the Sellers or their Affiliates relating to the Business as of the Closing, whether billed or unbilled as of the Closing Date, including, without limitation, unbilled vendor accounts payable and carrier access billing system payables, and all Accounts Payable shall be a Retained Liability.

**"Accounts Receivable"** shall mean (i) all amounts payable to any of the Sellers by Subscribers for any Service provided by the Business (subject to their return to Sellers pursuant



to Section 4.2.5) or any Capital Expenditures Obligation incurred by the Business on or before the Closing Date and (ii) all Advance Billings but shall not include any CABS Receivables.

*"Accounts Receivable Amount"* shall mean the aggregate amount of all Accounts Receivable (excluding any receivable that relates to a Capital Expenditure Obligation), net of allowance for doubtful accounts calculated in accordance with GAAP.

*"Accrued Expenses"* means all expenses accrued by the Sellers or their Affiliates relating to the Business, including, without limitation, personnel costs and surcharge fees.

*"Action"* shall have the meaning set forth in Section 5.9.

*"Adjusted Base Purchase Price"* shall have the meaning set forth in Section 2.2(a).

*"Advance Billings"* shall mean amounts billed (whether collected or not) in the ordinary course of business consistent with past practice by any of the Sellers to the Subscribers as of the Closing Date for the provision of Services after the Closing Date, including for pre-paid maintenance pursuant to the IRU Agreements listed in **Schedule 5.6**.

*"Affiliate"* of a Person shall mean any Person which directly or indirectly, through one or more intermediaries, owns, controls, or is controlled by, or is under common control with, the first Person. The term "control" (including, with correlative meaning, the terms "controlling", "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

*"Applicable Laws"* shall mean all federal, state and local statutes, ordinances, rules, and regulations, of any Governmental Authority that govern, regulate or otherwise apply to the Assets, the Business, Sellers or Purchaser.

*"Applicable Rate Centers"* shall have the meaning set forth in Section 10.7.

*"Assets"* shall mean all of the Sellers' rights in all assets listed on **Schedule 1(a)** and all other assets or properties, whether tangible or intangible, real, personal or mixed and wherever located, primarily used in the operation of the Business as the same may exist on the Closing Date, including, without limitation, the Telephone Plant, Accounts Receivable, Assigned Contracts, Books and Records, Inventory, Authorizations (to the extent their transfer is permitted by Applicable Law), Intellectual Property, and Real Property Interests and all rights, claims or causes of action of Sellers against third parties relating to the Business, or the Assets, including rights under insurance policies for events or circumstances occurring between the date of this Agreement and Closing and manufacturer's and vendor's warranties; provided, however, that, notwithstanding anything herein to the contrary, the term "Assets" shall not include (and Purchaser is not purchasing and acquiring hereunder) any of the Excluded Assets.

*"Assigned Contracts"* shall mean all of the Sellers' respective rights under all leases, contracts, commitments and other binding agreements relating primarily to the ownership of the

Assets or the operation of the Business to which any of the Sellers is a party or beneficiary, whether written or oral, other than any of the Excluded Assets.

*"Assumed Liabilities"* shall have the meaning set forth in Section 3.1.

*"Authorizations"* shall mean all of the approvals, tariffs, consents, authorizations, permits and licenses issued to any of the Sellers or their Affiliates by any Governmental Authority primarily relating to the Telephone Plant or the operation of the Business, other than Governmental Approvals.

*"Books and Records"* shall mean all of the books and records of the Sellers primarily relating to the Assets and the Business, including without limitation (a) books and records primarily relating to the purchase of materials and supplies, invoices, Subscriber lists, supplier lists, personnel records, sales literature, operating data, and Subscriber information, and (b) data in computer readable and/or human readable form primarily used to maintain such books and records, together with the media on which such data is stored and all documentation relating thereto; provided, however, that the term *"Books and Records"* shall not include (w) any books and records (and/or data, media or software) relating to or specifically designated an Excluded Asset; (x) any software, other than software embedded in an Asset; (y) any corporate books and records and/or stock ledgers of either of the Sellers or its respective Affiliates; or (z) any Tax Return of the Sellers except to the extent such Tax Return relates solely to the Assets or the Business.

*"Business"* shall have the meaning set forth in the Recitals hereto.

*"Business Day"* means a day that is not a Saturday, a Sunday or a statutory or civic holiday in the State of New York.

*"Business Financial Statements"* shall have the meaning set forth in Section 5.8.

*"CABS"* means a carrier access billing system.

*"CABS Receivables"* means all accounts receivable relating to CABS for Services provided by the Business on or before the Closing Date.

*"Capital Expenditure Obligations"* shall have the meaning set forth in Section 4.3.5.

*"Capital Expenditure Obligations Amount"* shall mean the aggregate amount actually spent by the Sellers between the date hereof and the Closing Date to comply with the Capital Expenditure Obligations mutually agreed upon under Section 4.3.5, excluding (i) all amounts spent on any project in excess of the budget for such project mutually agreed upon under Section 4.3.5 and (ii) any amount for which the Sellers or their Affiliates have been reimbursed.

*"CERCLA"* shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

*"CLEC Total Business"* means the businesses conducted by the Sellers as defined in this Agreement and the TelCove APA.

“*CLEC Total Business Financial Statements*” shall have the meaning set forth in Section 5.8.

“*Closing Date*” shall mean the date scheduled to consummate the sale of the Assets hereunder, which shall be the end of the first Business Day of the calendar month following the month in which all of the conditions to the Sellers’ and the Purchaser’s obligations to consummate the transactions contemplated by this Agreement have been satisfied or waived as provided in Article VI and VIII hereof, respectively, unless KMC Holdings and Purchaser otherwise mutually agree to a different date.

“*Closing Date Net Adjustment Statement*” shall have the meaning set forth in Section 2.3(a).

“*Closing Place*” shall mean such location agreed upon by the Parties.

“*Closing*” shall mean the closing of the transactions contemplated hereby.

“*Code*” shall mean the Internal Revenue Code of 1986, as amended.

“*Confidentiality Agreement*” shall mean the Confidentiality Agreement, dated April 21, 2004, between CenturyTel and KMC Holdings.

“*Consent Agreement*” shall mean the Consent to CLEC Transaction agreement in the form attached hereto as **Exhibit D**.

“*Consents*” shall mean any and all material consents, approvals, authorizations or waivers that are required to be obtained by any of the Sellers or the Purchaser, as the case may be, in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby (including those required under Sellers’ contracts relating to the Business), other than Governmental Approvals.

“*Contract Deposits*” shall mean all amounts paid as deposits by the Sellers or any of their Affiliates as of the Closing Date under any Assigned Contract to the extent Purchaser receives the benefit thereof, including any Real Property Lease, but excluding any such amounts that the recipient thereof (i) has returned to any of the Sellers or their Affiliates on or prior to the Closing Date or (ii) no longer has any obligation to return to Sellers or any of their Affiliates.

“*CPE*” shall mean equipment that is (i) required for delivery of Services and (ii) located on the premises of any Subscriber, other than any of the Excluded Assets.

“*Current Assets Amount*” shall, subject to Section 2.3(a), mean the sum of (i) the Accounts Receivable Amount, (ii) the Inventory Amount and (iii) the aggregate amount of Prepaid Expenses and Contract Deposits, as of the Closing Date, calculated without duplication and only to the extent included in the Assets.

“*Customer*” shall mean any Person purchasing any Service.

*"Data Division"* shall mean the data and other businesses (excluding the Business) conducted by the Data Holding Companies and their Affiliates, including those operations necessary to provide services to Qwest Communications International, Inc. and its Affiliates under take or pay service agreements.

*"Data Holding Companies"* shall mean KMC Data Holdco LLC, a Delaware limited liability company, and its wholly-owned subsidiary, KMC Data Holdco Sub LLC, a Delaware limited liability company, referred to collectively.

*"Deposits"* shall mean amounts as of the Closing Date paid by Subscribers to the Sellers as deposits for the purchase of CPE or the delivery of any Service.

*"Employees"* shall mean all persons employed by any of the Sellers (on a full or part-time basis), whose employment is primarily related to the operation of the Business.

*"Employee Benefit Accrued Expense"* shall have the meaning set forth in Section 13.1.

*"Environmental Laws"* shall mean Applicable Laws relating to pollution, the environment or the Handling of Regulated Substances, including, without limitation, CERCLA.

*"Escrow Agent"* shall have the meaning set forth in Section 2.2(b)(ii).

*"Escrow Agreement"* shall have the meaning set forth in Section 2.2(b)(ii).

*"Escrow Amount"* shall have the meaning set forth in Section 2.2(b)(ii).

*"Estimated Purchase Price"* shall have the meaning set forth in Section 2.2(a).

*"Excluded Assets"* shall mean those assets, properties, agreements and/or rights of any of the Sellers or any of the Seller's Affiliates set forth on **Schedule 1(b)**, none of which are being acquired by Purchaser hereunder.

*"FCC"* shall mean the Federal Communications Commission.

*"Final Purchase Price"* shall have the meaning set forth in Section 2.2(a).

*"Financial Statements"* shall have the meaning set forth in Section 5.8.

*"Future Regulatory Obligations"* shall mean all Liabilities related to the Assets and/or the operation of the Business arising out of any Applicable Law enacted or promulgated after the Closing Date (including new interpretations of existing statutes, ordinances, rules and regulations) or other action taken by a Governmental Authority with respect to any such law after the Closing Date.

*"GAAP"* means United States generally accepted accounting principles.

*"Governmental Approvals"* shall mean any and all consents, approvals, authorizations, waivers, permits, licenses, official actions of non-opposition of, registrations or filings with, or reports or notices to, any Governmental Authority that are required to be obtained by the Sellers

and/or Purchaser, as applicable, in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

*"Governmental Authority"* shall mean any court or any federal, state, county, local or foreign governmental or quasi-governmental, legislative or regulatory body, agency, department, authority, instrumentality or other subdivision thereof, including, without limitation, the FCC and the Public Utility Commissions.

*"Gross Revenues"* shall mean the product of (i) the revenue (exclusive of intercarrier compensation revenue (including reciprocal compensation and access fees) and revenue from Intercompany Agreements, late charges, sales of CPE, termination fees or other revenue of a one-time or non-recurring nature) earned by the Business (determined in accordance with the principles used to prepare the income statements for the Business as described in Section 5.8) during the month that precedes the month in which the Closing occurs and (ii) 12.

*"Gross Access Revenues"* shall mean the product of (i) the revenue earned by the Business (determined in accordance with the principles used to prepare the income statements for the Business as described in Section 5.8 excluding credits, prior period billings or adjustments or other adjustments necessary to normalize such month's billings) from access fees during the month that precedes the month in which the Closing occurs and (ii) 12.

*"Gross Revenues Deficit Amount"*

Confidential treatment requested

*"Gross Revenues Surplus Amount"*

Confidential treatment requested

*"Handling"* shall mean the production, use, generation, storage, treatment, recycling, disposal, discharge, release, or other handling or disposition at any time on or prior to the Closing Date of any Regulated Substance either in, on, or under any site owned or operated by the Sellers.

*"Indebtedness"* means all amounts owed by Sellers for borrowed money which is secured by any of the Assets, which indebtedness is set forth on **Schedule 1(i)** by type of indebtedness and total outstanding principal amount thereof as of the date hereof.

*"Indemnity Claim"* shall have the meaning set forth in Section 11.1.2.

*"Indemnity Notice"* shall have the meaning set forth in Section 11.1.2.

*"Intellectual Property"* means (i) trademarks, service marks, brand names, d/b/a's, domain names, logos, symbols, trade dress, assumed names, fictitious names, trade names, and

other indicia of origin relating to the Business, all applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby, including all renewals thereof (collectively, "Trademarks"); (ii) confidential information, trade secrets and know-how, including processes, business methods, maps, models, designs, customer lists and supplier lists relating to the Business (collectively, "Trade Secrets"); (iii) published and unpublished works of authorship relating to the Business, whether copyrightable or not (including databases and other compilations of information), including mask rights and computer software, copyrights therein and thereto, registrations and applications therefor, and all renewals, extensions, restorations and reversions thereof; and (iv) any inventions, patents or other intellectual property or proprietary rights relating to the Business.

*"Intercompany Agreements"* shall have the meaning set forth in Section 5.6.1.

*"Interconnection Agreements"* shall mean all interconnection agreements of KMC Holdings or any of its Affiliates that in whole or part relate to the Business, including all related memorandums of understanding, agreements or other instruments governing reciprocal compensation arrangements.

*"Inventory"* shall mean all merchandise (excluding dark fiber capacity which the Parties acknowledge is included in the definition of Telephone Plant) owned by any of the Sellers and intended for use in connection with the operation of the Business, on consignment to a third party or in transit or storage, which the Purchaser has chosen to purchase pursuant to Section 4.3.7, other than (i) any of the Excluded Assets and (ii) any Inventory which Purchaser has chosen not to purchase, in which case such items shall become an Excluded Asset and (iii) any item which Purchaser has chosen to purchase but which has been used or consumed in the operation of the Business prior to the Closing Date. Attached hereto as **Schedule 1(d)** is a list of inventory as of January 15, 2005, together with its location and estimated cost.

*"Inventory Amount"* shall mean the lesser of (i) the actual cost of the Inventory or (ii) current market value of the Inventory based upon a physical inventory conducted not earlier than fifteen (15) days prior to the Closing Date.

*"IRU Agreements"* shall mean any indefeasible right of use agreement or arrangement.

*"Joint Customer Contracts"* shall mean (i) contracts relating to both the Business and the Data Division and (ii) contracts relating to the Business and the business being sold under the TelCove APA, pursuant to which the Sellers provide Services to Customers, all of which Joint Customer Contracts are listed on **Schedule 1(f)**.

*"Joint National Customer Contracts"* shall mean those Joint Customer Contracts listed on **Schedule 1(g)**.

*"Joint Vendor Contracts"* shall mean (i) contracts relating to both the Business and the Data Division Business and/or (ii) contracts relating to the Business and the business being sold under the TelCove APA, pursuant to which goods or services are provided to the Business and which, in case of clauses (i) and (ii), are material and necessary to the operations of the Business, all of which Joint Vendor Contracts are listed on **Schedule 1(h)**.

*"Liabilities"* shall mean liabilities, obligations or commitments of any nature, absolute, accrued, contingent or otherwise, known or unknown, whether matured or unmatured.

*"Lien"* shall mean any claim, lien, pledge, option, charge, covenant, restriction, encroachment, easement, security interest, mortgage, deed of trust, right-of-way, encumbrance, lease obligation or adverse interest of any kind or character of any other Person, other than any Permitted Liens.

*"Losses"* shall have the meaning set forth in Section 11.2.1.

*"Markets"* shall mean all locations in which the Business has operations, which locations are specified on **Schedule 1(c)**.

*"Material Contracts"* shall have the meaning set forth in Section 5.6.1.

*"Net Adjustment Amount"* shall have the meaning set forth in Section 2.2(a).

*"New Interconnection Agreements"* shall have the meaning set forth in Section 4.1.6(a).

*"Non-Competition Agreement"* means the agreement substantially in the form of **Exhibit H** hereto.

*"Offeree"* shall have the meaning set forth in Section 13.1(a).

*"Operating Data Statements"* shall have the meaning set forth in Section 5.8.

*"Permitted Liens"* means (a) Liens for current Taxes and assessments not yet delinquent, or the amount or validity of which is being contested in good faith by appropriate proceedings during which collection or enforcement against the relevant property is stayed, (b) standard utility easements, covenants and restrictions of record that do not individually or in the aggregate materially interfere with the operation of the Business as currently conducted on the owned real property of the Sellers affected thereby, (c) mechanics', carriers', workers', repairers' and other statutory Liens, satisfaction of which has not come due in the ordinary course of business, (d) existing zoning or similar Applicable Laws or ordinances that do not interfere with the operation of the Business, (e) leases otherwise disclosed herein and (f) any other Liens that, individually or in the aggregate, do not and will not upon the passage of time or the occurrence of any event impose a material liability upon any Asset or materially interfere with the operation of the Business in a manner consistent with the current operation by the Sellers; provided, however, that, in the case of Liens of the type described in the foregoing clause (f), Purchaser shall be permitted to make a claim for indemnity under Section 11.2 with respect thereto, subject to the limitations set forth in Article XI.

*"Person"* shall mean an individual, a corporation, a partnership, an association, a joint stock company, a limited liability company, a trust, any unincorporated organization, or a government or a political subdivision thereof.

*"Prepaid Expenses"* shall mean all expenses relating to the Business which as of the Closing have been paid with respect to the future periods and which Purchaser receives the benefit thereof.

*"Purchaser Consents"* shall have the meaning set forth in Section 6.3(b).

*"Purchaser Material Adverse Effect"* means any change or effect that is materially adverse to the business, assets, results of operations or financial condition of the Purchaser and its Subsidiaries, taken as a whole, except for such change or effect resulting from (a) any change in economic, business, financial market, regulatory or political conditions generally or any change that affects the telecommunications industry specifically including continuing trends thereof; (b) the performance of this Agreement and/or the transactions contemplated hereby or the announcement thereof; or (c) any change in Applicable Laws or the enforcement and/or interpretation thereof.

*"Public Utility Commissions"* shall mean the Governmental Authorities in the states in which the Markets are located who regulate the Assets, the Telephone Plant or the Business.

*"Purchase Price"* shall mean, prior to the determination of the Final Purchase Price, the Estimated Purchase Price, and thereafter shall mean the Final Purchase Price.

*"Purchase Price Adjustment"* shall have the meaning set forth in Section 2.2(a).

*"Purchaser's Closing Certificate"* shall have the meaning set forth in Section 7.3.

*"Real Property Interests"* shall mean all real property owned or leased by any of the Sellers or their Affiliates that is primarily related to the operation of the Business and is located in the Markets, together with all buildings, improvements, fixtures, easements, licenses, options, insurance proceeds, deposits, and condemnation awards and all other rights, if any, of any of the Sellers in or appurtenant thereto, as well as all easements, rights of way, licenses, franchises or other interests in real property that are used primarily in the operation of the Business and are located in the Markets, except, in each case, the Excluded Assets.

*"Real Property Leases"* has the meaning set forth in Section 5.5.2.

*"Regulated Substance"* shall mean (i) any "hazardous substance" as defined in CERCLA, (ii) any petroleum or petroleum substance, and (iii) any other pollutant, waste, contaminant, or other substance regulated under Environmental Laws.

*"Related Transaction Agreements"* shall mean the Transition Services Agreement and the Escrow Agreement.

*"Representation and Warranty Insurance Policy"* means the policy substantially in the form set forth on **Exhibit H** hereto.

*"Representative"* shall mean any officer, director, manager, principal, attorney, agent, employee or other representative of any Person.



*"Required Purchaser Consents"* shall have the meaning set forth in Section 8.4.

*"Required Sellers Consents"* shall have the meaning set forth in Section 7.7.

*"Retained Liabilities"* shall have the meaning set forth in Section 3.2.

*"Sellers' Closing Certificate"* shall have the meaning set forth in Section 8.3.

*"Sellers Consents"* shall have the meaning set forth in Section 5.3(b).

*"Sellers Material Adverse Effect"* means any change or effect that is materially adverse to the business, assets, results of operations or financial condition of the Business or the Assets, taken as a whole, except for such change or effect resulting from (a) any change in economic, business, financial market, regulatory or political conditions generally or any change that affects the telecommunications industry specifically including continuing trends thereof; (b) the performance of this Agreement and/or the transactions contemplated hereby or the announcement thereof; or (c) any change in Applicable Laws or the enforcement and/or interpretation thereof.

*"Service"* shall have the meaning set forth in the Recitals hereto.

*"Shared Interconnection Agreements"* shall have the meaning set forth in Section 5.6.3.

*"Subscriber"* shall mean Customers of the Sellers that subscribe to any Services.

*"Subsidiary"* means any corporation or other organization, whether incorporated or unincorporated, of which such party directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization, or any organization of which such party is a general partner.

*"Survival Period"* shall have the meaning set forth in Section 11.1.1.

*"Tax"* shall mean any foreign, federal, state, county or local income, sales, use, transfer, excise, franchise, stamp duty, custom duty, real and personal property, gross receipt, capital stock, business and occupation, disability, employment, payroll, recording, ad valorem, unemployment compensation, profits, registration, social security, estimated, add-on, minimum, or withholding tax (including all interest and penalties thereon and additions thereto) imposed by any Governmental Authority or other taxing authority.

*"TelCove"* means TelCove, Inc., a Delaware corporation.

*"TelCove APA"* means the Asset Purchase Agreement substantially in the form of **Exhibit A** hereto, being entered into by the Sellers and TelCove, Inc.

*"Telephone Plant"* shall mean all plant, systems, structures, construction work in progress, telephone cable (whether in service or not or under construction), fiber assets (whether owned or held pursuant to an IRU agreement) telephone line facilities, poles and pole

attachments, conduits, machinery, furniture, vehicles, computer hardware and software, fixtures, tools, implements, conduits, stations, substations, equipment (including CPE, central office equipment, subscriber station equipment, digital subscriber line access multiplexers, asynchronous transmission mode switches, switching equipment, network connection equipment and other equipment in general), instruments, wiring connections and other telephonic personal property of any of the Sellers that are primarily used in the operation of the Business, excluding, in each case, the Excluded Assets. Without limiting the generality of the foregoing, Telephone Plant includes the assets that would be properly included in the fixed assets referenced in Part 32 of the FCC Rules and Regulations (47 CFR, Part 32).

*"To the knowledge"* or *"knowledge"* of a Party (or similar phrases) shall mean (i) with respect to the Sellers, to the extent of matters which are actually known (or upon reasonable inquiry by a prudent person would have been known) by any of the individuals set forth on **Schedule 1(e)**; or (ii) with respect to Purchaser, to the extent of matters which are actually known by any of the individuals set forth on **Schedule 1(i)**.

*"Transferred Employees"* shall have the meaning set forth in Section 13.1.

*"Transition Plan"* shall have the meaning set forth in Section 4.3.6

*"Transition Services Agreement"* shall mean the agreement substantially in the form attached hereto as **Exhibit C**.

*"Transition Team"* shall have the meaning set forth in Section 4.3.6.

**1.2. Other Definitional and Interpretive Matters.** Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded.

(b) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(c) Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

(d) Herein. The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(e) Including. The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(f) Schedules and Exhibits. The Schedules and Exhibits attached to this Agreement shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein. Any matter disclosed by Sellers on any one Schedule shall be deemed disclosed for purposes of all other Schedules if reasonably apparent that such matter is relevant. The inclusion of any matter in any schedule shall also be deemed to be an inclusion for other purposes of this Agreement, including each representation and warranty to which it may relate.

(g) Reasonable Commercial Efforts. The obligation of a party to use reasonable commercial efforts to accomplish an objective means that the obligated party is required to make a diligent, reasonable and good faith effort to accomplish the applicable objective. Such obligation, however, does not require any unreasonable expenditure of funds or incurrence of any unreasonable liability on the part of the obligated party (in each case, in the context of the expenditure to be made or liability to be incurred); provided, however, that the foregoing shall not require that the obligated party act in a manner that would be contrary to normal commercial practices in order to accomplish the objective. The fact that the objective is or is not actually accomplished is no indication that the obligated party did or did not in fact utilize its reasonable commercial efforts in attempting to accomplish the objective.

(h) Terminology and Construction. Unless otherwise indicated herein, any reference in this Agreement to a Section, Article, Exhibit or Schedule shall mean the applicable section, article, exhibit or schedule of or to this Agreement. A reference herein to any legislation or to any provision of any legislation shall include any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

## ARTICLE II

### PURCHASE OF ASSETS

**2.1. *Transfer of Assets; Retention of Excluded Assets.*** Subject to and upon the terms and conditions set forth in this Agreement, at the Closing, the Sellers shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase and acquire from the Sellers, all of the Sellers’ right, title and interest in the Assets, free and clear of any Liens. Notwithstanding anything herein to the contrary, each of the Sellers shall retain, and Purchaser shall not purchase and acquire hereunder, the Excluded Assets.

**2.2. *Purchase Price.*** (a) In consideration of the sale, transfer, conveyance, assignment and delivery by Sellers of the Assets to Purchaser, and in addition to assuming the Assumed Liabilities, Purchaser shall pay to KMC Holdings, on behalf of all of the Sellers, US\$ Sixty Five Million Dollars (\$65,000,000) (such amount being the “Base Purchase Price”), as

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**2.3. *Purchase Price Adjustment.*** The amount of the final and binding Purchase Price Adjustment and the Final Purchase Price shall be determined in accordance with the following provisions:

(a) As promptly as practicable, but in any event not later than 90 days after the Closing Date, Sellers shall cause to be prepared and delivered to Purchaser a statement of their calculation of the Adjusted Base Purchase Price and Net Adjustment Amount as of the Closing Date (the "Closing Date Net Adjustment Statement") and the related worksheets, schedules and other supporting materials thereto to be used to determine the definitive amount of the Purchase Price Adjustment. Subject to the final sentence of this paragraph, the Closing Date Net Adjustment Statement shall (i) fairly present the Adjusted Base Purchase Price and Net Adjustment Amount on the Closing Date, (ii) include only Accounts Receivable that have actually been collected in cash in the post-Closing period, unless the Purchaser specifically accepts any unpaid Accounts Receivable and (iii) be prepared in accordance with GAAP. Purchaser shall make available to Sellers and its representatives (at no material cost to Sellers) such books, records and employees of Purchaser as may be necessary for Sellers' preparation of the Closing Date Net Adjustment Statement.

(b) Unless Purchaser shall provide to Sellers a report indicting its objections, if any, and reasons therefor, to the Closing Date Net Adjustment Statement within 30 days of the receipt of the Closing Date Net Adjustment Statement and all supporting documentation from Sellers, Purchaser shall be deemed to have accepted the Closing Date Net Adjustment Statement as prepared by Sellers and such statement shall be final and binding on Purchaser and Sellers.

(c) Sellers shall make available to Purchaser and its representatives (at no material cost to Purchaser) the work papers, schedules, memoranda and other documents and information prepared or used by Sellers or its representatives in connection with the preparation of the Closing Date Net Adjustment Statement and the personnel and representatives of Sellers who prepared the Closing Date Net Adjustment Statement as may be necessary for Purchaser's review of the Closing Date Net Adjustment Statement.

(d) If the Purchaser has delivered a report with objections to the proposed Closing Date Net Adjustment Statement within the 30-day period provided in Section 2.3(b), the Sellers and Purchaser shall negotiate in good faith to resolve any disputes with respect to the Closing Date Net Adjustment Statement, provided that if any such dispute is not resolved within 30 days following the Sellers' receipt of any proposed objections delivered by Purchaser pursuant to Section 2.3(b), Purchaser and the Sellers shall jointly select and retain an independent public accounting firm (that is nationally recognized in the United States) to resolve such disputes, which resolution shall be final and binding; provided, however, that if the Parties fail to agree upon or are otherwise unable to retain (for whatever reason) such an accounting firm, the American Arbitration Association shall, upon the request of any Party, select an accounting firm. The fees and expenses of the accounting firm retained under this Section 2.3(d) shall be shared by Purchaser and the Sellers in inverse proportion to the relative amounts of the disputed amount determined to be for the account of Purchaser and the Sellers, respectively.

(e) *Payment of Purchase Price Adjustment.* Within three Business Days after the later of (i) the date of acceptance of the Closing Date Net Adjustment Statement by Purchaser, (ii) the date of the settlement between the Parties of any dispute or (iii) the date of the decision of the independent public accounting firm, as provided in Sections 2.3(b) or 2.3(d) above:

- (i) To the extent that the Final Purchase Price is less than the Estimated Purchase Price, Sellers will pay to Purchaser in immediately available funds the difference between the Final Purchase Price and the Estimated Purchase Price, and Sellers, after payment to Purchaser, shall have no further obligation or liability with respect to the Purchase Price Adjustment;
- (ii) To the extent that the Final Purchase Price is equal to the Estimated Purchase Price, no further obligation shall be due or payable by Purchaser or Sellers with respect to the Purchase Price Adjustment and neither Sellers nor Purchaser have any further obligation or liability with respect to the Purchase Price Adjustment; or

- (iii) To the extent that the Final Purchase Price is greater than the Estimated Purchase Price, Purchaser will pay to KMC Holdings, on behalf of all Sellers, in immediately available funds the difference between the Final Purchase Price determined under Section 2.2 above and the Estimated Purchase Price paid by the Purchaser on the Closing Date, and Purchaser after payment to Sellers shall have no further obligation or liability with respect to the Purchase Price Adjustment.

### ARTICLE III

#### ASSUMED OBLIGATIONS

**3.1. *Assumption of Liabilities by Purchaser.*** At the Closing, Purchaser shall assume and shall timely pay, perform, fulfill and discharge when due only the following Liabilities (collectively, the "Assumed Liabilities"): (i) any and all Liabilities arising from the operation of the Business or the ownership of the Assets after the Closing Date; (ii) all Liabilities relating to the Deposits and the Advanced Billings; (iii) the Future Regulatory Obligations; (iv) employee obligations expressly assumed by Purchaser in accordance with Article XIII; (v) all Liabilities associated with Permitted Liens (subject to the Proration provisions of Section 10.6 hereof); (vi) all Liabilities in connection with the performance of the Assigned Contracts (including the Intercompany Agreements) after the Closing Date including any obligations under warranties or guarantees of Services provided thereunder after the Closing Date, but (1) only to the extent that such contracts are either listed on **Schedule 5.6**, were made, assumed or entered into in the ordinary course of business prior to the date hereof and are not required to be included on **Schedule 5.6** or were entered into after the date hereof consistent with the provisions of Section 4.1 hereof, in each case, are reflected in the Books and Records and (2) excluding liabilities arising out of or relating to a breach of any such contract by any of the Sellers or their respective Affiliates on or prior to the Closing Date; and (vii) those Liabilities set forth on **Schedule 3.1**. The Assumed Liabilities shall not include any Retained Liabilities retained by the Sellers and their Affiliates under Section 3.2.

**3.2. *Retained Liabilities.*** The Sellers and their Affiliates shall remain liable for and shall pay and discharge all of the Liabilities of the Sellers and their Affiliates not expressly assumed by Purchaser pursuant to Section 3.1, including any amounts prorated to Sellers and their Affiliates pursuant to Section 10.6 hereof (the "Retained Liabilities"), including (i) all Liabilities relating to, associated with or arising out of the ownership of the Assets or the operation of the Business on or prior to the Closing Date (including for litigation or claims arising out of events, acts, omissions, occurrences or violations of Applicable Law on or prior to the Closing Date, whether or not such events, acts, omissions, occurrences or violations are listed on any Schedules), other than any of those expressly included among the Assumed Liabilities, (ii) all Liabilities of the Sellers and their Affiliates for long-term debt or borrowed money, (iii) any Liability under any Assigned Contracts that arises out of or relates to any breach thereof by any of the Sellers or their Affiliates on or prior to the Closing Date, (iv) all employee obligations retained by the Sellers in accordance with Article XIII, (v) all intercompany obligations of the Business arising or incurred on or prior to the Closing Date, (vi) all Liabilities for Accounts Payable and Accrued Expenses (other than for Deposits and employee obligations being assumed by Purchaser pursuant to Article XIII) and (vii) all Liabilities relating to, associated with or

arising out of the Data Business or any other Excluded Assets whether arising before or after the Closing Date.

## ARTICLE IV

### COVENANTS AND AGREEMENTS

**4.1. *Covenants of the Sellers.*** Each of the Sellers hereby covenants and agrees as follows:

**4.1.1 *Ordinary Course.*** On and after the date hereof until the Closing, except as contemplated by this Agreement and/or the transactions contemplated hereby or as otherwise expressly consented to by an officer of Purchaser in writing (such consent not to be unreasonably withheld or delayed), each of the Sellers (except that KMC Holdings may take the actions described in clauses (e) and/or (f) below as long as such actions do not adversely affect the Assets or the Business) and their respective Affiliates:

(a) shall carry on the Business in the ordinary course and in material compliance with all Applicable Laws and Authorizations, and in substantially the same manner as heretofore conducted and use reasonable commercial efforts to preserve the Business, maintain the Telephone Plant, keep available the services of the Employees and preserve the relationships of the Business with Customers, suppliers and third parties with whom the Business deals;

(b) without limiting the generality of the foregoing clause (a), shall not (i) incur, create, assume or suffer to exist any Lien (other than a Permitted Lien) on any of the Assets, except for Liens incurred in the ordinary course that, individually and in the aggregate, neither have resulted or will result upon the passage of time or the occurrence of any event in a Sellers Material Adverse Effect, (ii) sell, lease, license, transfer or dispose of any of the Assets to any Person (including Affiliates of the Sellers), other than dispositions of Inventory in the ordinary course consistent with past practice or asset sales contemplated under **Schedule 4.1**, (iii) solicit, initiate, encourage or pursue any inquiries or proposals from any Person regarding a sale of all or a substantial portion of the Business, (iv) amend or terminate any Authorization, other than terminations that do not materially interfere with the conduct of the Business in any particular Market, or (v) enter into any contract or other obligation that will become an Assigned Contract, other than (A) Subscriber agreements entered into in the ordinary course of business consistent with past practice that are reasonably expected to generate an internal rate of return equal or greater than the targeted rate, if any, approved by the transition team to be named under Section 4.3.6 and that otherwise contain terms and conditions substantially similar to those Subscriber agreements entered into by Sellers prior to the date hereof or (B) any other agreement entered into in the ordinary course that provides for aggregate payments by Sellers and its Affiliates of less than \$25,000;

(c) will not (i) enter into any collective bargaining agreement with respect to Employees or make any commitment whatsoever to any union or other representative or party which intends to represent any of Employees subsequent to the Closing, (ii) increase the compensation or benefits of any of the Employees listed on **Schedule 5.7.1**, except in the ordinary course pursuant to the terms of any agreements or plans currently in effect and listed on

**Schedule 5.7.3** or as contemplated by Section 13.4, (iii) enter into any new employment or severance agreements with Employees listed on **Schedule 5.7.1** or (iv) adopt any new employee benefit plan or program;

(d) will not terminate, cancel or rescind, or materially extend or materially amend or modify any Material Contract or pricing plan or waive any right of material value relating to the Business, except in any such case for those in the ordinary course of business that do not or will not give rise to a Sellers Material Adverse Effect;

(e) will not incur or assume any liabilities, obligations, other than those incurred in the ordinary course of business consistent with past practice that do not or will not give rise to a Sellers Material Adverse Effect or those that will constitute Retained Liabilities;

(f) will not incur or assume any indebtedness for borrowed money;

(g) will not take or agree to take any action which would cause any representation or warranty of Sellers in this Agreement to be or become untrue or inaccurate in any material respect or intentionally omit to take or agree to omit to take any action necessary to prevent any such representation or warranty from being or becoming untrue in any material respect;

(h) will not transfer ownership, possession or use of any tangible Assets currently used in any particular Market operated by the Business to any other market, other than transfers of Assets which are approved by Purchaser prior to such transfer; which approval shall not be unreasonably conditioned, withheld or delayed; provided, however, that Purchaser's conditioning its approval on an appropriate adjustment to the Purchase Price for any Assets moved outside the Markets shall not be considered unreasonable;

(i) will confer with Purchaser prior to implementing any material operational decisions impacting the Business, unless such action is prohibited by Applicable Law; and

(j) will not enter into any agreement or commitment or take or commit to take any action which would cause a violation of any of the foregoing.

**4.1.2 Retention of Records.** On the Closing Date or promptly thereafter, each of the Sellers shall deliver to Purchaser all such Books and Records as are reasonably requested by Purchaser. In addition, for a period of four years after the Closing Date, each of the Sellers shall make available to Purchaser upon reasonable notice copies of any documents not theretofore delivered to Purchaser that primarily relate to the Assets or the Business.

**4.1.3 Interim Information.** On and after the date hereof until the Closing, each of the Sellers shall make available to Purchaser monthly interim financial statements and such other information as Purchaser may reasonably request regarding the Business or the Assets, including data regarding service order activity, order backlog, network utilization, accounts receivable, revenue, disconnections and such information regarding Sellers' product and service offerings and the format of Sellers' billing and customer care systems as may be reasonably necessary for Purchaser to prepare to convert Sellers' customers to Purchaser's billing and customer care systems on or after the Closing Date.



**4.1.4 Accounting Information.** Before and after the Closing, the Sellers shall provide to Purchaser such accounting, customer and plant record information with respect to the Assets and the Business as Purchaser may reasonably request, including information reasonably necessary for Purchaser to (i) add plant, asset and network data onto its accounting and plant inventory systems; (ii) convert customer accounts onto its billing and customer care systems and (iii) monitor the performance of the Business prior to the Closing Date.

**4.1.5 Interconnection Agreements.** (a) Prior to the Closing, the Sellers shall use commercially reasonable efforts to replace or sever each of the Shared Interconnection Agreements listed on **Schedule 5.6** in order to produce two agreements, one of which would enable the Sellers to obtain services on behalf of the Business on the same terms and conditions as currently provided under the agreement to be replaced or severed (each agreement so replaced shall be a "New Interconnection Agreement"), and the second of which would enable Affiliates of the Data Holding Companies to obtain comparable services on behalf of the Data Division. Sellers shall obtain Purchaser's approval (which approval Purchaser agrees will not be unreasonably conditioned, withheld or delayed) prior to entering into any New Interconnection Agreement.

(b) Sellers shall use commercially reasonable efforts to obtain all requisite consents to the assignment to Purchaser at the Closing of each Interconnection Agreement (including for these purposes any New Interconnection Agreements) and all associated rights thereunder used in connection with the Business in a manner that (i) permits Purchaser to continue to use all of the Sellers' Access Customer Name Abbreviations and the corresponding Operating Company Numbers, (ii) enables Purchaser to continue to enjoy the same rights currently held by the Sellers thereunder and (iii) avoids imposing any material new costs, charges, fees, obligations or liabilities on Purchaser thereunder. Notwithstanding the foregoing, the Purchaser and Sellers understand and agree that there are several on-going proceedings before the Federal Communications Commission and the Public Service Commissions that may affect intercarrier compensation among communications companies, including the terms and conditions set forth in the Interconnection Agreements.

**4.1.6 Co-location Agreements; Bandwidth Table.** Within 90 days after the date of this Agreement, Sellers shall provide a list of each co-location agreement or arrangement that permits Affiliates, Customers or others to store equipment on premises owned or operated by the Sellers or their Affiliates in connection with the Business. Sellers shall provide, within 15 days after the date of the Agreement, tables depicting the total bandwidth transport capacity (both used and unused) of the Business.

**4.1.7 TelCove Closing.** Sellers will not consummate their proposed sale of assets under the TelCove APA prior to the Closing Date.

**4.1.8 Joint National Customer Contracts.** Each of the Sellers shall use reasonable commercial efforts to take, or cause to be taken, all actions necessary or appropriate to transfer to Purchaser from and after the Closing Date the revenue stream allocable to the Business under each Joint National Customer Contract, subject to the terms and conditions of each Joint National Customer Contract.

**4.2. Covenants of Purchaser.** Purchaser covenants and agrees that on and after the date hereof until the Closing:

**4.2.1 Purchaser Not to Control.** Notwithstanding any provision of this Agreement that may be construed to the contrary, each of the Sellers shall maintain actual (de facto) and legal (de jure) control over the Assets and the Business.

**4.2.2 Services Agreement.** Subject to the terms and conditions herein, at the Closing Purchaser shall be assigned by Sellers and assume each Intercompany Agreement with one or more of the Sellers and/or an Affiliate listed on **Schedule 5.6**.

**4.2.3 Knowledge of Breach.** Purchaser shall promptly notify KMC Holdings if Purchaser obtains knowledge of any actual or prospective breach of any representation, warranty, covenant or obligation of the Sellers, or any actual or prospective failure of a condition hereunder. If Purchaser is found to have violated its covenants in the preceding sentence, such violation shall be deemed to constitute a waiver with respect to such breach or condition, but only to the extent that Sellers' breach was unintentional and only to the extent that Purchaser's failure to notify the Sellers causes or increases Losses for which indemnification is available under Article XI.

**4.2.4 Contacts with Employees, Suppliers and Customers.** Prior to the Closing, Purchaser shall not contact any Employees (other than the Transition Team and senior management of the Business) in connection with or pertaining to any subject matter of this Agreement except in conjunction with Sellers or as permitted by Sellers (which permission shall not be unreasonably withheld) and except as provided for in the Transition Plan, and Sellers agree to work with Purchaser in preparing a joint communication to the Employees. In addition, prior to Closing, Purchaser will not contact, without the prior written consent of Sellers (which consent will not be unreasonably withheld), any customer or supplier of the Business.

**4.2.5 CABS Receivables; Account Receivables.** The Purchaser agrees that (i) it will bill all CABS Customers for Services rendered during the 60-day period prior to the Closing which have not been billed as of the Closing, (ii) it shall use its reasonable commercial efforts to collect the CABS Receivables owed by the Customers for a period of 180 days after the Closing and (iii) shall pay to KMC Holdings all CABS Receivables collected from Customers on a monthly basis. Upon collection of CABS Receivables from Customers, the amount received shall be applied on a "first in – first out" basis to the oldest CABS Receivables of a Customer not in dispute, unless otherwise directed by the Customer. The Purchaser also agrees that (i) it will use its reasonable commercial efforts to collect any Accounts Receivable until the Closing Date Net Adjustment Statement is final and binding and (ii) any Account Receivables which it collects after the Closing Date, which have not been included in the Closing Date Net Adjustment Statement because the Account Receivables had not been collected as of the date that such statement became final and binding, shall be (i) turned back to KMC Holdings and be an Excluded Asset and (ii) if any amount with respect thereto is received by Purchaser, shall be remitted to KMC Holdings within 30 days of collection.

**4.2.6 Transition and Transition Services.** Purchaser agrees that (i) following the entry into this Agreement, it shall meet with, discuss and plan with TelCove the services to

be provided under a transition services agreement between it and TelCove and (ii) it shall use reasonable commercial efforts to enter into such transition services agreement with TelCove to provide services requested by TelCove and to have services provided to it by TelCove after the closing under the TelCove APA.

#### **4.3. *Mutual Covenants of the Sellers and Purchaser.***

**4.3.1 *Reasonable Commercial Efforts.*** On and after the date hereof until the Closing, each of the Parties agrees to use reasonable commercial efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary or appropriate under Applicable Laws and the Assigned Contracts to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, including without limitation: (i) filing or supplying all applications, notifications and information required to be filed or supplied by it pursuant to Applicable Law or any Authorizations; (ii) obtaining the Consents, Governmental Approvals and any other permits, consents, approvals, orders and authorizations of, or any exemptions or waivers by, all third parties and Governmental Authorities necessary for such Party to consummate the transactions contemplated hereby; and (iii) coordinating and cooperating with the other Parties in exchanging information, keeping the other Parties reasonably informed with respect to the status of the foregoing and supplying such reasonable assistance as may be reasonably requested by the other Parties. Purchaser shall pay the filing fees associated with the filings required by this **Section 4.3.1**.

**4.3.2 *Schedule Amendments.*** From time to time prior to the Closing, in order to make the information contained in any Schedule timely, complete and accurate, Sellers or Purchaser may amend or supplement their respective Schedules but no such amendment or supplement shall have any effect for purposes of determining whether the conditions set forth in Articles VII and VIII have been satisfied.

**4.3.3 *Access and Information.*** Sellers and Purchaser shall, and shall cause their respective Affiliates to, give to Purchaser and their respective officers, employees, accountants, counsel, financial advisors, and other representatives, during normal business hours throughout the period from the date hereof to the Closing, access as reasonably requested to all of their offices, books, contracts, commitments, reports of examination and records (unless prohibited by Applicable Law) primarily relating, in the case of Sellers, to the Business or the Assets (but excluding the Excluded Assets and Retained Liabilities). Sellers and Purchaser shall, and shall cause their respective Affiliates to, assist and cooperate with each other in making such investigation and shall cause its employees, counsel, accountants, engineers, consultants and other non-employee representatives to be reasonably available to each other for such purposes.

**4.3.4 *Name Change.*** The Sellers acknowledge and agree that Purchaser may, at its option, change its name to "KMC Telecom III LLC" immediately prior to the Closing, and will take any actions reasonably necessary to assist Purchaser in implementing such name change. Purchaser agrees that, if it effects such name change, it shall market and sell its Services in an assumed or fictitious name which shall not include "KMC" in its name and, as soon as practicable as it no longer has any business reason to use the name, it will change its name to a name not having "KMC" therein.

**4.3.5 Capital Expenditures.** If any Seller or its Affiliates determines that a capital expenditure primarily related to the Assets or the operation of the Business is necessary or desirable prior to the Closing (whether due to Applicable Laws, a request of a Customer relating to an agreement that is, or can reasonably be expected to become, an Assigned Contract, or otherwise) and involves a capital expenditure by any Seller of more than \$25,000, then such Seller shall promptly notify Purchaser in writing of Seller's plans for making such capital expenditure and the anticipated cost thereof and request Purchaser's consent for the capital expenditure (it being agreed by Purchaser that a Seller or its Affiliates may, subject to Section 4.1.1, make capital expenditures for the foregoing reasons involving \$25,000 or less without the consent of Purchaser); provided, however, that, notwithstanding the foregoing, Sellers shall remain responsible for, and Purchaser shall not be required to consent to or reimburse Sellers for, any routine capital expenditures which do not enhance or improve the Telephone Plant or Business. Within 15 days of its receipt of any such notice, Purchaser shall notify such Seller as to whether Purchaser believes, in good faith, that such capital improvement is warranted. If Purchaser believes, in good faith, that such expenditure is warranted, and Seller and Purchaser mutually agree upon the project's scope and budget, then Purchaser shall consent thereto, which consent shall not be unreasonably withheld, and the mutually agreed upon budgeted amount shall constitute, along with any capital expenditure which enhances the Telephone Plant or Business but involves the expenditure of \$25,000 or less, for all purposes hereof, a "Capital Expenditure Obligation." Notwithstanding the foregoing, Purchaser shall not have grounds to believe that a capital expenditure is not warranted if such expenditure is required by Applicable Law and shall work, in good faith, with Seller as to the project's scope and budget for the capital expenditure.

**4.3.6 Transition Team.** Purchaser and each Seller agree that promptly following the date hereof they shall organize a transition team (the "Transition Team"), chaired by a representative of the Sellers and including equal representation of Purchaser, on the one hand, and Sellers, on the other hand, for the purposes of (i) discussing the possible grant of consents under Section 4.1.1 or otherwise conferring upon matters in the manner contemplated under such section, (ii) discussing proposed capital expenditures under Section 4.3.5, (iii) coordinating activities under Article XIII, (iv) preparing for the delivery of services under the Transition Services Agreement and the Intercompany Services Agreement and (v) developing a detailed plan for the transition of the Business from Sellers to Purchaser (the "Transition Plan"), including detailed plans for (A) the delivery by Sellers of such interim financial and operational information regarding the Business as Purchaser may reasonably request under Section 4.1.4 or 4.1.5, (B) the possibility of planning for or implementing the co-location of equipment and other steps necessary to link the network assets of Purchaser and its Affiliates with the Telephone Plant and otherwise preparing for Purchaser's use of the Assets after the Closing to provide long-haul data transport services to other communications companies, (C) the conversion of customer records, employee records, plant records and other data and systems related to the Business from Sellers' systems to Purchaser's systems, and (D) the migration of transitional services, if any, to be provided by Sellers or their Affiliates to Purchaser or its Affiliates and by Purchaser or its Affiliates to Sellers or their Affiliates over a reasonable period of time following the Closing. The parties shall cooperate in good faith to provide such support and resources as may be reasonably required to implement the Transition Plan. Each of the Sellers, Purchaser and their respective Affiliates will bear their respective costs as provided for in the Transition Plan; provided, however, that Sellers shall not be required to incur any out-of-pocket costs for the purchase of assets or circuits.

**4.3.7 Inventory.** For a period of up to 30 days from the date hereof, Purchaser shall have the right to determine which items of Inventory it wishes to purchase from Sellers, which items of Inventory will be sold by Sellers to Purchaser at Closing for the price set forth under the definition "Inventory Amount" as part of the Purchase Price Adjustment.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES OF THE SELLERS**

Except (i) as set forth on the Schedules or (ii) as expressly contemplated by this Agreement, as of the date hereof (except that representations and warranties that are made as of a specific date need to be true only as of such date), each of the Sellers represents and warrants to Purchaser that:

**5.1. Organization and Standing.** Each of the Sellers (a) is a limited liability company or a corporation, as the case may be, duly organized or incorporated and validly existing and in good standing under the laws of its respective state of organization or incorporation, (b) has full corporate or limited liability company power and authority to execute and deliver this Agreement and each of the Related Transaction Agreements to which it is a party, to perform its obligations hereunder or thereunder, to consummate the transactions contemplated hereby or thereby, to own and lease the Assets owned by it and to carry on the Business as now being conducted by it, and (c) is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the nature of the business conducted by it or the ownership or operation of the Assets requires such qualification, except where the failure to be so qualified or in good standing would not be reasonably likely to cause a Sellers Material Adverse Effect.

**5.2. Authorization and Binding Obligations.** Each of the Sellers has duly and validly taken all necessary corporate or limited liability company action that is necessary to authorize the execution, delivery and performance of this Agreement and each Related Transaction Agreement to which such Seller is a party, including approval by (i) the requisite vote of its respective Board of Directors or Board of Managers and (ii) any required votes of the shareholders or debtholders of KMC Holdings or its Affiliates. Each of the Sellers have duly executed and delivered this Agreement and, as of the Closing, will have duly executed and delivered each of the Related Transaction Agreements to which it is a party. This Agreement constitutes and each of the Related Transaction Agreements when entered into by a Seller will constitute a valid and binding obligation of each Seller that is a party thereto, enforceable against them in accordance with its terms, except as its enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

**5.3. No Contravention; Consents.** (a) Assuming all Sellers Consents are obtained, the execution, delivery and performance of this Agreement and the Related Transaction Agreements, the consummation of the transactions contemplated hereby and thereby and the compliance with the provisions hereof and thereof by the Sellers will not (a) violate any of the respective provisions of the organizational documents of the Sellers, (b) result in a breach of, constitute a default under, or result in the creation of any Lien upon any of the Assets under, the provisions of any agreement or other instrument to which any of the Sellers is a party or by

which any Asset is bound or affected or (c) with respect to the Sellers, violate any Applicable Laws or order, judgment or decree of any Governmental Authority, subject to, in the case of each of (b) and (c) above, such exceptions as are not reasonably likely to cause a Sellers Material Adverse Effect.

(b) No consent, approval, order or authorization of, or registration, declaration or filing with, or notice to any person is required to be obtained, made or taken in connection with the execution and delivery of this Agreement by Sellers or for the consummation of the transactions contemplated hereby by Sellers, except for (i) consents or approvals set forth in **Schedule 5.3(b)**, (ii) consents or approvals with respect to the Real Property Interests and the Assigned Contracts which are specifically addressed in Sections 5.5.2 and 5.6 (items (i) and (ii) being referred to herein as the "Sellers Consents"), and (iii) such consents, approvals, orders, authorizations, registrations, declarations or filings the failure of which to be obtained or made, individually or in the aggregate, would not reasonably cause a Sellers Material Adverse Effect.

**5.4. Compliance with Law.** Each of the Seller's operation of the Business and ownership of the Assets has materially complied with material Applicable Laws. The Sellers have all Authorizations materially necessary to operate the Business as currently conducted. Nothing in this Section 5.4 is intended to address any compliance issue that is the specific subject of any other representation or warranty set forth in this Agreement.

#### **5.5. Assets / Title.**

**5.5.1 Title to and Condition of Assets.** Except as set forth on **Schedule 5.5.1**, (i) the Sellers own and have good and valid title to (or a valid leasehold interest in or otherwise have the right to possess and use) all of the Assets (except with respect to the Real Property Interests which are specifically addressed in Section 5.5.2), free and clear of all Liens, (ii) the Assets constitute all of the assets, rights, property and interests, whether tangible or intangible, primarily used in connection with the operation of the Business and, when acquired by Purchaser hereunder, will constitute all of the assets, rights, property and interests, whether tangible or intangible, necessary to operate the Business in the manner presently operated by Sellers, excluding the Excluded Assets and the items listed on **Schedule 5.5.1**, and (iii) all material tangible Assets are in reasonable operating condition and repair, ordinary wear and tear excepted.

**5.5.2 Real Property Interests.** **Schedule 5.5.2** is a list of (i) all agreements under which any of the Sellers lease real property for use by the Business ("Real Property Leases") and (ii) all other material Real Property Interests; provided, however, that **Schedule 5.5.2** shall, with respect to co-location agreements, (A) list only those co-location agreements or arrangements that permit any particular Customer to use more than one standard 23-inch wide metal telecommunications equipment rack in any building owned or operated by the Sellers and (B) be supplemented or replaced by the list of all co-location agreements or arrangements to be furnished pursuant to Section 4.1.6. Except as set forth on **Schedules 5.5.1 and 5.5.2**, (i) each of the Sellers owns and has good and marketable title to all of the owned Real Property Interests to be transferred by it hereunder, free and clear of all Liens, (ii) each Real Property Lease is in full force and effect and has not been materially impaired by any acts or omissions of the Sellers which is a party to the lease, and (iii) no Consent of any third party is required to effect the

assignment and transfer of any such Real Property Interests. Except as described on **Schedule 5.5.2** or the list of co-location agreements or arrangements to be provided under Section 4.1.6, none of the Sellers nor their Affiliates have granted any rights to other Persons (including Affiliates of Sellers operating the Data Division) to use or locate equipment on the Real Property Interests owned by the Sellers.

**5.5.3 Network Data.** **Schedule 5.5.3** contains (i) a table of the network fiber Assets of the Sellers utilized in the Business as of November 30, 2004 and (ii) a map of the network routes of the Sellers utilized in the Business as of November 30, 2004. All information and data contained or set forth in **Schedule 5.5.3** is accurate in all material respects. The information contemplated to be provided by Section 4.1.6 shall be true and correct in all material respects when provided by Sellers to Purchaser.

## **5.6. Material Contracts.**

**5.6.1** **Schedule 5.6** sets forth a list of each (i) agreement, contract or commitment (A) limiting or restricting the freedom of the Purchaser after the Closing to compete in any manner with respect to the Business, (B) granting any Lien other than a Permitted Lien with respect to the Assets, (C) entitling any Person to purchase any Assets, other than those contracts entitling Customers or Subscribers to purchase Services or sales of Inventory in the ordinary course to unaffiliated purchasers for full value, (D) obligating any Seller or its Affiliates to make payments based on the revenues of all or any part of the Business, or (E) any IRU Agreement that permits any Person (other than for switching telecommunications or transport services to Customers or Subscribers) to use the network fiber assets of the Sellers utilized in the Business, (ii) Assigned Contract currently in effect, other than those that (w) involve annual aggregate payments to any of the Sellers or their Affiliates of \$250,000 or less in connection with providing any Service, including under Joint National Customer Contracts, (x) involve annual aggregate payments from any of the Sellers or their Affiliates of \$50,000 or less, (y) are cancelable by any of the Sellers upon 90 days' or less notice without penalty or other financial obligation, or (z) relate to the Real Property Interests, and (iii) each intercompany agreement between or among any of the Sellers with any of the other Sellers or their Affiliates (including the Data Holding Companies and their Affiliates) providing for the purchase, sale, use, licensing, leasing or sharing of any goods, services, real estate or other tangible or intangible assets relating to the Business or which constitute Assets ("Intercompany Agreements") together with a designation as to whether Sellers anticipate such agreement to be re-negotiated to remain in effect subsequent to the Closing Date. The agreements, contracts and commitments set forth on **Schedule 5.6**, together with the Real Property Leases, are hereinafter referred to collectively as the "Material Contracts."

**5.6.2** Except as set forth on **Schedule 5.6** (i) each Material Contract is in full force and effect in all material respects, (ii) no Material Contract requires the Consent of any other party thereto with respect to the transactions contemplated by this Agreement or the Related Transaction Agreements, (iii) none of the Sellers is (and, to the knowledge of the Sellers, no other party thereto is) in breach or violation in any material respect of, or default in any material respect under, any of the Material Contracts and (iv) none of the Sellers has been notified in writing nor has knowledge of any intent by any party to any Material Contract to

terminate or amend the terms thereof or to refuse to renew any Material Contract upon the expiration of its respective term.

**5.6.3** With respect to each Interconnection Agreement listed thereon, **Schedule 5.6** shall (i) identify those Interconnection Agreements that will need to be severed or replaced consistent with the requirements set forth in Section 4.1.5 hereof because they relate to both the Business and the business of the Data Division (the "Shared Interconnection Agreements") and (ii) disclose, for each Interconnection Agreement, each party to such agreement, the agreement's scheduled termination date.

**5.6.4** Except as set forth in the Sellers' tariffs related to the Business, the Sellers and their Affiliates have not guaranteed or warranted any Service provided to any retail Customers in any respect, except substantially in a form similar to those forms of guaranties or warranties set forth on **Schedule 5.6**.

**5.7. *Employees; Employment Obligations; Employee Benefit Plans.***

**5.7.1 *Employees.*** **Schedule 5.7.1(a)** lists each Employee of the Sellers (other than those listed on **Schedule 5.7.1(b)** or who are employees of the Data Division), together with his or her job location, title, job function, tenure, current annual salary or wages, 2003 bonus, 2004 target bonus, and current accrued vacation and sick days.

**5.7.2 *Employment Obligations.*** (a) Except as set forth on **Schedule 5.7.2**, none of the Sellers, as it relates to Employees listed on **Schedule 5.7.1(a)**, is a party to or bound by any oral or written employment agreement or collective bargaining agreement (other than any employment agreements terminable on 30 days' or less notice without penalty or severance obligation) with or relating to any officer, employee or consultant employed or retained in respect of the Business.

(b) Subject to such exceptions as are not, individually or in the aggregate, material, each of the Sellers has complied with all material Applicable Laws which relate to wages, hours, discrimination in employment and collective bargaining in respect of the Business and is not liable for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing.

(c) None of the Sellers is a party to any collective bargaining agreement. There is not currently pending or, to the knowledge of the Sellers, there is not threatened any strike, slowdown or work stoppage or any unionization or collective bargaining activities involving the Employees or the Business.

**5.7.3 *Employee Benefit Plans.*** (a) Set forth on **Schedule 5.7.3** hereto is a list identifying each "employee benefit plan", as defined in Section 3(3) of ERISA, (i) which is subject to any provision of ERISA, (ii) which is maintained, administered, contributed to or required to be contributed to by any of the Sellers or any affiliate thereof, and (iii) which covers any current or former Employee. In addition, **Schedule 5.7.3** sets forth a list of all deferred compensation plans, all supplemental death, disability, medical reimbursement, severance, bonus and all other employee benefit plans of any kind or character, whether written or oral, that either of the Sellers, or any affiliate thereof, either participates in or maintains in respect of current or



former Employees (the plans referenced in this sentence and the preceding sentence hereinafter referred to collectively as the "Employee Plans"). The Sellers have made available to Purchaser accurate and complete copies of such plans. For purposes of this Section 5.7.3 only, an "affiliate" of any person means any other person which, together with such person, would be treated as a single employer under Section 414 of the Code.

(b) No Employee Plan constitutes a "multiemployer plan", as defined in Section 3(37) of ERISA, and no Employee Plan is subject to Title IV of ERISA or to the minimum funding standards of ERISA or the Code. Neither of the Sellers nor any of its respective affiliates has ever maintained, contributed to, or been required to contribute a multiemployer plan as defined in Section 3(37) of ERISA, a plan subject to Title IV of ERISA, or a plan subject to the minimum funding standards of ERISA or the Code.

(c) Each of the Sellers and all of its respective affiliates have paid and discharged promptly when due all liabilities and obligations with respect to an Employee Plan arising under ERISA or the Code of a character which if unpaid or unperformed might result in the imposition of a Lien against any of the assets of any of the Sellers or any of its respective affiliates. Each Employee Plan has been operated and administered in compliance with all Applicable Laws, subject to such exceptions as are not, individually or in the aggregate, reasonably likely to cause a Sellers Material Adverse Effect. Nothing done or omitted to be done and no transaction or holding of any asset under or in connection with any Employee Plan has made or will make either of the Sellers or any of its respective affiliates subject to any material liability under Section 502(i) or (l) of Title I of ERISA or liable for any tax pursuant to Section 4975 of the Code.

(d) Except as set forth on **Schedule 5.7.3**, none of the Sellers nor any of its respective affiliates maintain, contribute to, or is required to contribute to any Employee Welfare Benefit Plan providing medical, health, or life insurance or other welfare-type benefits for current or future retired or terminated employees, their spouses, or their dependents (other than in accordance with Section 4980B of the Code or Sections 601-607 of ERISA).

(e) With respect to the Employee Plans, (i) no claim, lawsuit, arbitration or other action or proceeding is pending or, to the knowledge of the Sellers, has been threatened, asserted or instituted against any of the Sellers, or any affiliate thereof, or any Employee Plan, and (ii) to the knowledge of the Sellers, there are no grounds any such actions, suits or claims. Purchaser shall be notified by the Sellers promptly in writing upon their knowledge of any such threatened or pending claim arising between the date hereof and the Closing.

(f) Each of the Sellers, and its affiliates, is in compliance in all material respects with the Family and Medical Leave Act of 1993 and there are no facts that exist which could give rise to any action, suit or claim arising directly or indirectly under such Act which could result in a material Liability.

**5.8. Financial Statements.** Attached hereto as **Schedule 5.8** are (i) the unaudited balance sheet and income statement of the CLEC Total Business as of and for the eleven-month period ended November 30, 2004 (the "CLEC Total Business Financial Statements"); (ii) the unaudited income statement of the Business and selected financial data for the Business

(including accounts receivable, prepaid expenses, property plant & equipment, accounts payable, accrued expenses and deferred revenue) for the eleven month period ending November 30, 2004, all as derived from the CLEC Total Business Financial Statements (the "Business Financial Statements" and together with the CLEC Total Business Financial Statements, the "Financial Statements"); and (iii) certain operating data of the Sellers with respect to the Business as of the respective dates set forth thereon (collectively, the "Operating Data Statements"). The CLEC Total Business Financial Statements have been prepared from the books and records of the Sellers and present fairly, in all material respects, the financial position and the results of operations of the CLEC Total Business, in accordance with GAAP. However, because the Business represents only a portion of the CLEC Total Business, the Business Financial Statements reflect the use of estimates and allocations, which are reasonable and necessary to cause such Business Financial Statements to fairly reflect the results of operation and certain selected financial data (as listed above) of the Business, in all material respects, in relation to the CLEC Total Business, taken as a whole, as reflected in the CLEC Total Business Financial Statements. To the knowledge of the Sellers, the information set forth on the Operating Data Statements is true and correct in all material respects as of the respective dates set forth thereon. To the knowledge of the Sellers, none of the Sellers has any Liabilities primarily related to the Business, whether accrued or absolute, except (a) as and to the extent disclosed on **Schedule 5.8**, (b) Liabilities that were incurred after November 30, 2004 in the ordinary course of business and are not prohibited by this Agreement or (c) Liabilities that are not, individually or in the aggregate, material.

**5.9. Litigation.** (a) Except as set forth on **Schedule 5.9(a)**, there is no action, claim, suit, order, judgment, litigation, commission complaint, or proceeding ("Action"), pending or, to the knowledge of the Sellers, threatened, against any of the Sellers relating to the Assets, the Business or the transactions contemplated by this Agreement that are, individually or in the aggregate, material. None of the Sellers is in default in any material respect with respect to any judgment, order, writ, injunction or decree of any court or governmental agency that is primarily related to the Business, and there are no material unsatisfied judgments against any of the Sellers that are primarily related to the Business or the Assets.

(b) **Schedule 5.9(b)** lists the percentage of monthly network availability for each Market for each completed month since January 1, 2004.

**5.10. Taxes.** Each of the Sellers has paid in full or discharged all Taxes related to the ownership of the Assets and the operation of the Business, except for Taxes which are not yet due or which are being contested in good faith or for which adequate reserves have been established, and there are no Taxes the non-payment of which could result in a material Lien on the Assets in the hands of the Purchaser.

**5.11. No Other Agreements to Sell the Assets.** Except as set forth in **Schedule 5.11**, none of the Sellers has any legal obligation, absolute or contingent, to any other Person to sell, or offer to sell (including any right of first refusal or other similar agreement), the Assets.

**5.12. Environmental Matters.** Except as set forth in **Schedule 5.12** and subject to such exceptions as are not, individually or in the aggregate, material, (a) each of the Seller's operation of the Business and ownership of the Assets comply and have at all times complied with the

Environmental Laws, (b) each of the Sellers has obtained all permits, licenses, registrations, and other approvals and has made all reports and notifications required under any Environmental Laws in connection with the operation of the Business or the ownership of the Assets and (c) to the knowledge of the Sellers, there are no pending Actions, activities, circumstances, conditions, events or incidents relating to Sellers' use of the Real Property Interests or Handling of Regulated Substances that are reasonably likely to impose upon the Sellers (or any Person whose liability the Sellers have retained or assumed, either by contract or operation of law) any environmental liability, including common law tort liability.

**5.13. No Brokers.** None of the Sellers nor any of their respective Affiliates has entered into any contract or other agreement with any Person which will result in the obligation of Purchaser to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated hereby.

**5.14. Miscellaneous.** Purchaser is purchasing the Assets based solely on the results of its inspections and investigations and the representations and warranties contained in this Agreement, and not on any representation or warranty of the Sellers that is not expressly set forth in this Agreement. No representation or warranty made by the Sellers in this Agreement, and no statement made by the Sellers in any Schedule, Exhibit, certificate or other document to be executed and delivered by the Sellers at the Closing, contains any untrue statement of a material fact or knowingly omits or fails to state any material fact or information necessary to make such representation or warranty or any such statement not materially misleading. Any claims Purchaser may have for breach of representations or warranties shall be based solely on the representations and warranties of the Sellers set forth in this Agreement. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE AND ALL OTHER WARRANTIES ARISING UNDER THE UNIFORM COMMERCIAL CODE OR OTHERWISE, ARE HEREBY WAIVED BY PURCHASER.

**5.15. Authorizations.** Schedule 5.15 contains a true and correct list of all material Authorizations, with the exception of those of a corporate nature, as of the date hereof. Except as set forth thereon and subject to such exceptions as are not, individually or in the aggregate, reasonably likely to cause a Sellers Material Adverse Effect, (a) the Authorizations are validly issued in the name of the Sellers and are in full force and effect, (b) the Authorizations, with the exception of those of a corporate nature, are unimpaired by any acts or omissions of the Sellers and are free and clear of any restrictions which might limit the full operation of the Business and (c) all material reports and other documents required to be filed by the Sellers with the FCC and the Public Utility Commissions with respect to the Business have been filed or the time period for such filing has not lapsed.

**5.16. Complaints and Proceedings.** Except as listed in Schedule 5.16 or is immaterial to the Business, (a) there is no notice from the FCC or any Public Utility Commission of apparent liability or order of forfeiture pending or outstanding against the Sellers respecting any violation, or allegation thereof, of any rule, regulation or policy promulgated by the FCC or any Public Utility Commission or (b) to the knowledge of the Sellers, any complaint, allegation or investigation before any Governmental Authority as a result of which Sellers believe an

investigation, notice of apparent liability or order of forfeiture is likely to issue from any Governmental Authority relating to the Business.

**5.17. *No Sellers Material Adverse Effect.*** Except as set forth on **Schedule 5.17**, since the date of the attached Business Financial Statements to the date of this Agreement, there has been no change, event, occurrence, development or condition that either individually or in the aggregate has resulted or with the passage of time could reasonably be expected to result in a Sellers Material Adverse Effect.

**5.18. *IRU Agreements.*** Sellers and their Affiliates have no unfulfilled material obligations with respect to the IRU Agreements listed next to numbers 29 through 41 of subsection E (IRU Agreements and Fiber Leases) of **Schedule 5.6** except for routine maintenance obligations.

**5.19. *Qwest Equipment.*** The Qwest Equipment listed in subsection III. (Excluded Equipment) A.1. of **Schedule 1(b)** is not necessary for the operation of the Business and is not used in connection with the Business except as part of the Intercompany Agreements.

**5.20. *Compliance.*** As of the date hereof, Sellers and their Affiliates are in compliance, in all material respects, with the material terms and conditions of (i) the agreements with respect to their Indebtedness and (ii) the Consent Agreement. As of the Closing Date, Sellers and their Affiliates will be in compliance, in all material respects, with the material terms and condition of the Consent Agreement.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except (i) as set forth on the Schedules or (ii) as expressly contemplated by this Agreement, as of the date hereof (except that representations and warranties that are made as of a specific date need to be true only as of such date), Purchaser represents and warrants to the Sellers that:

**6.1. *Organization and Standing.*** Purchaser (a) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Louisiana, (b) has full limited liability company power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, and (c) is, or by the Closing Date will be, duly qualified to do business and is in good standing as a foreign company in every jurisdiction in which the nature of the business conducted or the ownership or operation of assets by it requires such qualification, except where the failure to be so qualified and in good standing would not be reasonably likely to cause a Purchaser Material Adverse Effect.

**6.2. *Authorization and Binding Obligations.*** The execution, delivery and performance by Purchaser of this Agreement and each Related Transaction Agreement has been duly and validly authorized by all necessary corporate action on the part of Purchaser, including the approval by the Board of Managers of Purchaser. The Purchaser has duly executed and delivered this Agreement and will, as of the Closing, have duly executed and delivered each of

the Related Transaction Agreements to which it is a party. This Agreement constitutes and each of the Related Transaction Agreements to which it is a party, when entered into by the Purchaser, will constitute a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms except as its enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

**6.3. No Contravention; Consents and Approvals.** (a) Assuming all Purchaser Consents are obtained, the execution, delivery and performance of this Agreement and the Related Transaction Agreements, the consummation of the transactions contemplated hereby and the compliance with the provisions hereof by Purchaser will not (a) violate any provisions of the organizational documents of Purchaser, (b) result in the breach of, or constitute a default under or result in the creation of any Lien upon any assets of Purchaser under, the provisions of any agreement or other instrument to which Purchaser is a party or by which the assets of Purchaser is bound or affected or (c) with respect to the Purchaser, violate any Applicable Laws or order, judgment or decree of any Governmental Authority, subject in the case of each of (b) and (c) above, such exceptions as are not reasonably likely to cause a Purchaser Material Adverse Effect.

(b) No consent, approval, order or authorization of, or registration, declaration or filing with, or notice to any person is required to be obtained, made or taken in connection with the execution and delivery of this Agreement by Purchaser or for the consummation of the transactions contemplated hereby by Purchaser, except for (i) any filings, consents or approvals set forth in **Schedule 6.3** (the "Purchaser Consents"), and (ii) such consents, approvals, orders, authorizations, registrations, declarations or filings the failure of which to be obtained or made, individually or in the aggregate, would not reasonably cause a Purchaser Material Adverse Effect.

**6.4. Litigation.** Except as set forth on **Schedule 6.4**, there is no Action pending or, to the knowledge of Purchaser, threatened against Purchaser that would have been reasonably likely to have a Purchaser Material Adverse Effect or materially adversely affect Purchaser's ability to consummate the transactions contemplated by this Agreement. Neither Purchaser nor any of its Subsidiaries is in material default with respect to any judgment, order, writ, injunction or decree of any court or governmental agency, and there are no unsatisfied judgments against Purchaser or any of its Subsidiaries. Except as set forth on **Schedule 6.4**, there is no complaint or investigation pending before the FCC or Public Utility Commissions relating to Purchaser or any Affiliate thereof which could reasonably be expected to result in the modification or loss of any FCC or Public Utility Commissions authorization or the imposition of a fine in excess of \$10,000.

**6.5. Qualification.** Purchaser is or on the Closing Date will be fully qualified under the rules and policies of the FCC and the Public Utility Commissions to acquire, own and operate the Assets and Telephone Plants, and Purchaser knows of no facts which might reasonably lead the FCC or Public Utility Commissions or any other Governmental Authority to refuse to grant any Governmental Approvals.

**6.6. No Brokers.** Neither Purchaser nor any of its Affiliates, directors, officers, employees or agents has employed any investment banker, broker or finder in connection with the transactions contemplated hereby.

**6.7. Financing.** Purchaser or CenturyTel has access to sufficient funds or credit arrangements available to pay (a) the Purchase Price in accordance with Section 2.2 and (b) all expenses incurred by Purchaser in connection with the transactions contemplated hereby.

## **ARTICLE VII**

### **CONDITIONS TO THE SELLERS' OBLIGATIONS**

The obligations of the Sellers to sell the Assets and to otherwise consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions, any one or more of which may be waived by the Sellers:

#### **7.1. Representations, Warranties and Covenants.**

**7.1.1 Representations and Warranties of Purchaser True at Closing.** Each of the representations and warranties of Purchaser contained in this Agreement (A) that are qualified by materiality or Purchaser Material Adverse Effect shall be true and correct and (B) that are not qualified by materiality or Purchaser Material Adverse Effect shall be true and correct in all material respects, in each case at and as of the Closing Date as though such representations and warranties were made at and as of the Closing Date, except to the extent that such representations and warranties are made as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such dates.

**7.1.2 Performance by Purchaser.** Purchaser shall have performed in all material respects all obligations and agreements and complied in all material respects with all covenants required by this Agreement to be performed or complied with by it prior to or at the Closing.

**7.2. Closing Documents.** The Sellers shall have received from Purchaser the documents and other items to be delivered by Purchaser pursuant to Section 9.2.

**7.3. Certificate.** Purchaser shall furnish the Sellers with a certificate of a duly authorized officer of Purchaser to evidence compliance with the conditions set forth in Section 7.1 ("Purchaser's Closing Certificate").

**7.4. Purchase Price.** Purchaser shall have paid the Estimated Purchase Price in accordance with Section 2.2.

**7.5. No Restraint.** Consummation of the transactions contemplated hereby shall not have been restrained, enjoined or otherwise prohibited by any order, injunction, decree or judgment of any court or other Governmental Authority or any Applicable Law.

**7.6. Authorization.** Purchaser shall have delivered evidence, satisfactory to the Sellers, that the authorizations contemplated by Section 6.2 has been timely obtained.

**7.7. Consents and Governmental Approvals.** (a) Sellers shall have obtained all Governmental Approvals set forth in **Schedule 7.7** (the "Required Sellers Consents") and (b) with respect to all Material Contracts for which consent by the party or parties other than Sellers is required for the assignment to Purchaser, either (i) Sellers shall have obtained consent of such party or parties to transfer the Material Contract to Purchaser or (ii) Purchaser shall have obtained a replacement contract therefor, on commercially reasonable terms and without requiring material expenditure, individually or in the aggregate, by the Sellers for the consent to the assignment to the Purchaser or for the entry into the replacement contract with the Purchaser.

**7.8. Gross Revenues Deficit.**

Confidential treatment requested

**7.9. Warranty Insurance.** The Representation and Warranty Insurance Policy shall have been issued to Purchaser.

## **ARTICLE VIII**

### **CONDITIONS TO PURCHASER'S OBLIGATIONS**

The obligations of Purchaser to purchase the Assets and to otherwise consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions, any one or more of which may be waived by Purchaser:

#### **8.1. Representations, Warranties and Covenants.**

**8.1.1 Representations and Warranties of Sellers True at Closing.** The representations and warranties of Sellers contained in this Agreement (A) that are qualified by materiality or Sellers Material Adverse Effect shall be true and correct and (B) that are not qualified by materiality or Sellers Material Adverse Effect shall be true and correct in all material respects, in each case at and as of the Closing Date as though such representations and warranties were made at and as of the Closing Date, except to the extent that such representations and warranties are made as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such dates.

**8.1.2 Performance by Sellers.** Sellers shall have performed in all material respects all obligations and agreements and complied in all material respects with all covenants required by this Agreement to be performed or complied with by them prior to or at the Closing.

**8.2. Closing Documents.** Purchaser shall have received from the Sellers the documents and other items to be delivered by the Sellers pursuant to Section 9.1.

**8.3. Certificate .** The Sellers shall furnish Purchaser with a certificate, dated as of the Closing Date and duly executed and delivered by an authorized officer of each of the Sellers, certifying that each of the Sellers (i) has complied with all of the conditions set forth in Sections

8.1 through 8.6 and (ii) is not a foreign Person within the meaning of applicable U.S. Treasury Regulations (the "Sellers' Closing Certificate").

**8.4. Governmental Approvals; Consents.** (a) Purchaser shall have obtained all required Governmental Approvals including, without limitation, those set forth in **Schedule 8.4** (the "Required Purchaser Consents") and (b) with respect to all Material Contracts for which consent by the party or parties other than Sellers is required for the assignment to Purchaser, either (i) Sellers shall have obtained consent of such party or parties to transfer the Material Contract to Purchaser or (ii) Purchaser shall have obtained a replacement contract therefor, on commercially reasonable terms and without requiring material expenditure, individually or in the aggregate, by the Purchaser for the consent to the assignment to Purchaser or by the Purchaser for the entry into the replacement contract with the Purchaser.

**8.5. No Material Change.** Since the date of this Agreement, there shall have been no change, event, occurrence, development or condition that either individually or in the aggregate has resulted in a Sellers Material Adverse Effect, provided, however, that no loss after the date of this Agreement of revenue related to any services provided to the Data Division shall be considered, individually or in the aggregate, in the determination of whether there has been a Sellers Material Adverse Effect under this Section 8.5.

**8.6. Gross Revenues Deficit.**

Confidential treatment requested

**8.7. Non Competition Agreements.** Each of Harold N. Kamine, William H. Stewart and Roscoe Young shall have duly executed and delivered to Purchaser a Non Competition Agreement substantially in the form of agreement attached as **Exhibit G**.

**8.8. Consent to Transaction.** All of the creditors holding Indebtedness of the Sellers shall have duly executed and delivered to Purchaser the Consent Agreement, which Consent Agreement shall not have been rescinded, amended or modified without Purchaser's consent.

**8.9. No Restraint.** Consummation of the transactions contemplated hereby shall not have been restrained, enjoined or otherwise prohibited by any order, injunction, decree or judgment of any court or other Governmental Authority or any Applicable Law.

**8.10. Warranty Insurance.** The Representation and Warranty Insurance Policy shall have been issued to Purchaser, at Seller's expense.

## ARTICLE IX

### THE CLOSING

Subject to the terms and conditions herein, on the Closing Date at the Closing Place:

**9.1. Deliveries by the Sellers to Purchaser.** The Sellers shall deliver to Purchaser:



**9.1.1** bills of sale from each of the Sellers (other than KMC Holdings) in substantially the form attached hereto as **Exhibit E** or other appropriate documents of transfer reasonably necessary to effect the transactions contemplated hereunder;

**9.1.2** subject to the Permitted Liens, a special warranty deed in respect of the owned Real Property Interests;

**9.1.3** a copy of (i) the resolutions of the board of directors or managers of each of the Sellers approving the transactions contemplated by this Agreement and (ii) the organizational documents of each of the Sellers, in each case certified by an appropriate officer of one or more of the Sellers;

**9.1.4** the Sellers' Closing Certificate;

**9.1.5** executed counterparts of the Related Transaction Agreements;

**9.1.6** executed copies of the agreements contemplated by Section 8.7; and

**9.1.7** copies of the Required Sellers Consents and such other documents reasonably requested by Purchaser to document the satisfaction of applicable closing conditions.

**9.2. Deliveries by Purchaser to the Sellers.** Purchaser shall deliver to the Sellers:

**9.2.1** the instrument of assumption of liabilities in substantially the form attached hereto as **Exhibit F**;

**9.2.2** the Purchaser's Closing Certificate;

**9.2.3** the Estimated Purchase Price in accordance with Section 2.2.; and

**9.2.4** an executed counterpart of the Related Transaction Agreements.

## **ARTICLE X**

### **ACTIONS BY THE PARTIES AFTER THE CLOSING**

**10.1. Contract Deposits.** Each Seller agrees to pay to Purchaser or its designee any Contract Deposits returned to it after the Closing (but only if and to the extent such deposit was reflected as a Current Asset for purposes of determining the Purchase Price Adjustment under Article II).

**10.2. Further Assurances.** Following the Closing, the Parties will take, and shall cause their Affiliates to take, all appropriate action and execute all documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the provisions hereof, including without limitation putting Purchaser (or its designee) in possession and operating control of the Assets.

**10.3. Post-Closing Tax Covenant.** (a) Following the Closing, each of the Sellers shall pay or arrange for the payment of Taxes when due with respect to the ownership of the Assets and the operation of the Business for taxable periods, or portions thereof, ending on or before the Closing Date.

(b) Sellers and Purchaser acknowledge and agree that (i) Sellers will be responsible for and will perform all Tax withholding, payment and reporting duties with respect to any wages and other compensation paid by Sellers to any Employee in connection with the operation or conduct of the Business prior to or on the Closing Date and (ii) Purchaser will be responsible for and will perform all Tax withholding, payment and reporting duties with respect to any wages and other compensation paid by Purchaser to any Transferred Employee in connection with the operation or conduct of the Business after the Closing Date.

**10.4. No Transfer Without Consent.** Notwithstanding anything herein to the contrary, to the extent that the sale, conveyance, transfer, assignment or delivery or attempted sale, conveyance, transfer, assignment or delivery to Purchaser of any of the Assets (including any Assigned Contract) is prohibited by any Applicable Law or would require any governmental or third-party authorizations, approvals, consents or waivers and such authorizations, approvals, consents or waivers shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, conveyance, transfer, assignment or delivery, or an attempted sale, conveyance, transfer, assignment or delivery thereof, if any of the foregoing would constitute a violation of Applicable Law and/or a breach of the rights of any third party; provided, however, that, except to the extent that a condition to Closing set forth in Articles VII or VIII relating to the foregoing shall not be satisfied, the Closing shall occur notwithstanding the foregoing without any adjustment to the Purchase Price. Following the Closing, the Parties shall use their reasonable commercial efforts, and shall cooperate with each other, to obtain promptly such authorizations, approvals, consents or waivers; provided, however, that neither Sellers nor any of their respective Affiliates shall be required to pay any significant consideration therefore, including, without limitation, any franchise, filing, assignment or other fees or charges. Pending or in the absence of such authorization, approval, consent or waiver, the Parties shall cooperate with each other in any reasonable and lawful arrangements to provide to Purchaser the benefits and liabilities of use of such Asset to the maximum extent practicable. If such authorization, approval, consent or waiver for the sale, conveyance, transfer, assignment or delivery of any such Asset is obtained, the Sellers shall promptly convey, transfer, assign and deliver, or cause to be conveyed, transferred, assigned and delivered, such Asset to Purchaser and shall duly execute and deliver any instruments necessary to give effect thereto.

**10.5. Use of Excluded Assets by Purchaser.** Following the Closing, except as otherwise provided in the Transition Services Agreement, Purchaser shall not use any of the Excluded Assets.

**10.6. Prorations; Accounts Payable.** (10.6.1 The following liabilities that call for periodic payments shall be prorated between the Sellers and Purchaser: (i) utility charges (which shall include water, sewer, electricity, gas and other utility charges) with respect to the Real Property Interests, (ii) rental charges (which shall include rental charges and other lease payments under the Real Property Interests), (iii) payments under Joint Contracts, (iv) any Taxes that are imposed on a periodic basis and are payable for a taxable period that includes (but does

not end on) the Closing Date, including but not limited to real and personal property Taxes, ad valorem Taxes, and franchise fees or Taxes ("Periodic Taxes"), (v) any employee related expenses and (vi) any other expenses that are payable with respect to a period commencing before and ending after the Closing Date. With respect to measurement periods during which the Closing Date occurs (all such periods of time being hereinafter called "Proration Periods"), the liabilities described in clauses (i), (ii), and (iii) of the preceding sentence shall be apportioned between the Sellers and Purchaser as of the Closing Date, with Purchaser bearing only the expense thereof in the proportion that the number of days remaining in the applicable Proration Period after the Closing Date bears to the total number of days covered by such Proration Period. Periodic Taxes shall be prorated between Purchaser and the Sellers based on the relative periods the Asset was owned by each respective Party during the fiscal period for which Periodic Taxes were assessed by the taxing jurisdiction (as such fiscal period is reflected on the bill rendered by such taxing jurisdiction). Purchaser and the Sellers shall pay or be reimbursed for Periodic Taxes (including instances in which such property Taxes have been paid before the Closing Date) on this prorated basis. If a payment on a Periodic Tax bill is due after the Closing, the Party that is legally required to make such payment shall make such payment and promptly forward an invoice to the other Party for its pro rata share, if any. If the other Party does not pay the invoice within thirty calendar days of receipt, the amount of such payment shall bear interest at the rate of eight percent (8%) per annum. Similarly, all prepayments made by the Sellers with respect to service or maintenance agreements requiring periodic payments with third parties or license or other fees payable to third parties shall be prorated on an appropriate basis between the Sellers and Purchaser.

(a) In the event that Purchaser receives a benefit after the Closing as a result of an Account Payable retained by the Sellers, Purchaser agrees to reimburse KMC Holdings for the amount of the benefit actually received at the Sellers' cost therefor.

**10.7. Agreement Not to Compete.** (a) Without the prior written consent of Purchaser, each Seller and each Data Holding Company shall refrain, and cause each of its subsidiaries, to refrain, at all times during the one-year period immediately following the Closing Date, from (i) directly or indirectly owning, operating, managing, investing in, advising, consulting, promoting or otherwise engaging or participating in any business or line of business that, in whole or part, markets, offers, provides or sells in the rate centers set forth on **Schedule 10.7** (the "Applicable Rate Centers") any local, long distance, data transport or other communications telecommunications service in the Applicable Rate Centers or any related or ancillary products or services in the Applicable Rate Centers, (ii) knowingly enabling or otherwise knowingly assisting any of its current or prospective customers to provide or sell any products or services in the Applicable Rate Centers that, if provided or sold by Sellers, the Data Holding Companies or their Affiliates would violate Section 10.7(a)(i) above, or (iii) directly or indirectly soliciting, inducing, influencing or attempting to influence any Customer or supplier of the Business (as of the Closing Date) to discontinue or reduce the extent of its business relationship with the Business.

(b) Purchaser acknowledges and confirms that (i) the Data Holding Companies may continue to provide (x) managed modem and other PRI services to Qwest Communications International, Inc. and its Affiliates and (y) managed modem and other PRI services under the agreements set forth on **Schedule 10.7(b)**, but only to the extent that such services in (x) and (y)

are provided primarily through the use of only those Services provided to the Data Division pursuant to the Intercompany Agreements and (ii) ownership by any of the Data Holding Companies of 5% or less of a class of securities of a publicly traded company shall not be a violation of Section 10.7(a).

(c) Each Seller and each Data Holding Company agrees with Purchaser that the scope of Section 10.7(a) is the result of arm's-length bargaining, is fair and reasonable and is necessary to induce Purchaser to enter into this Agreement. The parties intend that the covenant contained in Section 10.7(a), subject to Section 10.7(b) shall be enforced to the fullest extent permitted under Applicable Law. If in any judicial proceeding a court of competent jurisdiction shall refuse to enforce the foregoing covenant not to compete according to its terms, the Parties shall negotiate in good faith to modify or limit the scope of this covenant in a manner that they believe, after consultation with their respective counsel, will result in the covenant being enforced in the pending judicial proceeding, it being the intent of this provision that Purchaser shall at all times have the benefit of the foregoing covenant not to compete, except to the extent as may be required to be limited or modified by Applicable Law or a judgment of a court of competent jurisdiction.

## **ARTICLE XI**

### **INDEMNIFICATION**

#### **11.1. *Survival; Time Limitation.***

**11.1.1** The representations, warranties, covenants and agreements of the Parties set forth in this Agreement shall survive the execution and delivery of this Agreement and the Closing, subject to the following: (a) the representations and warranties of the Sellers in Section 5.5.1 and the covenants and agreements of the Parties set forth herein shall survive indefinitely and (b) all representations and warranties of the Parties set forth in Article V (except in Section 5.5.1) and Article VI shall survive for a period of 12 months after the Closing Date (with each such time period being hereinafter referred to as the "Survival Period").

**11.1.2** Notwithstanding anything herein to the contrary, (a) any claim for indemnification hereunder (an "Indemnity Claim") must be asserted not later than the termination of the Survival Period set forth in Section 11.1.1; and (b) an Indemnity Claim shall be deemed to have been asserted only if a written notice thereof, describing in reasonable detail the facts alleged to give rise to such Claim and referring to the applicable Section of this Agreement under which such Claim arises (the "Indemnity Notice"), has been given to the Party against whom such Claim is asserted.

#### **11.2. *The Sellers' Indemnity.***

**11.2.1** From and after the Closing Date and subject to the other Sections of this Article XI, each of the Sellers jointly and severally shall indemnify and hold harmless Purchaser, its Affiliates and their respective Representatives ("Purchaser Indemnitees") from and against any and all demands, claims, losses, liabilities, actions or causes of action, assessments, actual damages (but excluding consequential, special and/or punitive damages, including damages

resulting from lost profits, business opportunities or goodwill), fines, Taxes, penalties, reasonable costs and expenses (including, without limitation, interest, reasonable expenses of investigation, reasonable fees and disbursements of counsel, accountants and other experts, whether or not resulting from third-party claims) (collectively "Losses") incurred or suffered by any Purchaser Indemnitees, directly or indirectly arising out of or resulting from:

(a) Any breach of any of the representations or warranties made by the Sellers in this Agreement;

(b) Any failure by the Sellers to perform any of its respective covenants or agreements contained in this Agreement; or

(c) Any of the Excluded Assets or Retained Liabilities (including any prorations under Section 10.6 hereof).

**11.2.2** As collateral security for the Sellers' indemnification obligations under this Agreement and subject to the terms and conditions of the Escrow Agreement and this Article XI, (i) 100% of the Escrow Amount plus all accrued interest thereon shall be held by the Escrow Agent until the six-month anniversary of the Closing Date, at which time 50% of the Escrow Amount shall be disbursed to Sellers in accordance with the terms of the Escrow Agreement, (ii) the remaining 50% of the Escrow Amount plus all accrued interest shall be held by the Escrow Agent until the nine-month anniversary of the Closing Date, at which time 25% of the Escrow Amount shall be disbursed to Sellers in accordance with the terms of the Escrow Agreement, and (iii) the remainder of the Escrow Amount plus all accrued interest shall be held by the Escrow Agent until the 12-month anniversary of the Closing Date, at which time all such amounts shall be disbursed to Sellers in accordance with the terms of the Escrow Agreement; provided, however, that on all such anniversary dates the amount to be disbursed to Sellers shall be reduced by such amount as may be necessary to retain in escrow sufficient funds to secure any indemnification claims of Purchaser Indemnitees that are then pending. Notwithstanding anything set forth in this Section 11.2.2 or in the Escrow Agreement to the contrary, if the amounts held in escrow are not sufficient to satisfy the Sellers' indemnification obligations hereunder, then the Sellers shall remain liable for the full amount of such indemnification obligations, subject to the provisions of this Article XI.

**11.3. *Purchaser's Indemnity.*** From and after the Closing Date and subject to the other Sections of this Article XI, Purchaser shall indemnify and hold harmless the Sellers, their respective Affiliates and their respective Representatives ("Seller Indemnitees") from and against any and all Losses incurred or suffered by any Seller Indemnitees, directly or indirectly, arising out of or resulting from:

(a) Any breach of any of the representations or warranties made by Purchaser in this Agreement;

(b) Any failure by Purchaser to perform any of its covenants or agreements contained in this Agreement; or

(c) Any of the Assumed Liabilities (including any prorations under Section 10.6 hereof).

#### **11.4. Procedure.**

**11.4.1** If any third party (including, without limitation, any taxing authority) shall make or assert a claim against any Purchaser Indemnatee or Seller Indemnatee (the "Indemnified Party") with respect to any matter which may give rise to a claim for indemnification against any other Party (the "Indemnifying Party"), then the Indemnified Party shall notify each Indemnifying Party thereof promptly; provided, however, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any liability or obligation under this Agreement unless (and then solely to the extent) the Indemnifying Party is damaged or prejudiced thereby. In the case of any such claim pursuant to which only the recovery of a sum of money is being sought and the Indemnifying Party (i) enters into an agreement with the Indemnified Party (in form and substance reasonably satisfactory to the Indemnified Party) pursuant to which the Indemnifying Party agrees to be fully responsible (with no reservation of any rights other than the right to be subrogated to the rights of the Indemnified Party) for all Losses relating to such claim and unconditionally guarantees the payment and performance of any Liability which may arise with respect to such claim or the facts giving rise to such claim for indemnification, and (ii) furnishes the Indemnified Party with evidence that the Indemnifying Party, in the Indemnifying Party's reasonable judgment, is and will be able to satisfy any such Liability, the Indemnifying Party may, by giving written notice to the Indemnified Party, assume the defense thereof. In such case, (A) the Indemnifying Party will defend the Indemnified Party against such matter with counsel of its choice satisfactory to the Indemnified Party and (B) the Indemnified Party may retain separate co-counsel at its sole cost and expense (except that the Indemnifying Party will be responsible for the fees and expenses of any separate counsel to the Indemnified Party incurred prior to the date upon which the Indemnifying Party effectively assumes control of such defense). In the event that the Indemnifying Party is not entitled to assume control of the defense of a claim pursuant to the terms of the second sentence of this Section 11.4.1, the Indemnifying Party may retain separate co-counsel at its sole cost and expense to participate in such defense and, in any event, the Indemnified Party shall (i) provide the Indemnifying Party with all material information requested by such party relating to the defense of such claim, (ii) confer with the Indemnifying Party as to the most cost-effective manner in which to defend such claim and (iii) use its reasonable efforts to assist in minimizing the cost of defending such claim. The Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to such matter without the written consent of the Indemnifying Party (not to be withheld unreasonably), and the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to such matter without the written consent of the Indemnified Party (not to be withheld unreasonably).

**11.4.2** Amounts payable by the Indemnifying Party to the Indemnified Party in respect of any Losses for which any Party is entitled to indemnification hereunder shall be payable by the Indemnifying Party as incurred by the Indemnified Party, unless such Indemnity Claim is disputed by the Indemnifying Party.

**11.5. Indemnification Payments in Cash.** All payments in respect of any undisputed or resolved Indemnity Claims shall be made in immediately available funds.

**11.6. Limitation of Liability.** Notwithstanding anything in this Agreement to the contrary:

**11.6.1** The Sellers shall not be required to indemnify the Purchaser Indemnitees and shall not have any liability under 11.2.1(a) or 11.2.1(b) hereof:

- (a) for any individual occurrences, events, circumstances, acts or omissions where the Losses relating thereto is less than \$ ~~\_\_\_\_\_~~ and any such occurrences, events, circumstances, acts or omissions shall not be taken into account for purposes of Section 11.6.1(b);
- (b) ~~unless the aggregate of all Losses exceeds, on a cumulative basis, an amount equal to \$ \_\_\_\_\_ and then only to the extent of any such excess;~~
- (c) for any Losses in the aggregate in excess of an amount equal to ~~\_\_\_\_\_~~ % of the Purchase Price; *provided, however,* that any Losses relating to the breach of the representations and warranties set forth in Section 5.5.1 shall be limited to ~~\_\_\_\_\_~~ % of the Purchase Price;
- (d) for any Losses which have been taken into account in the determination of the Purchase Price Adjustment.

**11.6.2** Purchaser shall not be required to indemnify the Seller Indemnitees and shall not have any liability under 11.3(a) or 11.3(b) hereof:

- (a) for any individual occurrences, events, circumstances, acts or omissions where the Losses relating thereto is less than \$ ~~\_\_\_\_\_~~, and any such occurrences, events, circumstances, acts or omissions shall not be taken into account for purposes of Section 11.6.2(b);
- (b) ~~unless the aggregate of all Losses exceeds, on a cumulative basis, an amount equal to \$ \_\_\_\_\_ and then only to the extent of any such excess; or~~
- (c) for any Losses in the aggregate in excess of an amount equal to ~~\_\_\_\_\_~~ % of the Purchase Price.

**11.6.3** The Sellers shall not be required to indemnify any Losses arising under this Article XI resulting from any event or item relating to any actual or prospective breach of any representations or warranties, covenants or obligations of Sellers if (i) the Purchaser and/or its Affiliates has actual knowledge of such event or item on or before the Closing Date and violated its covenant in Section 4.2.3 and (ii) Sellers' breach was unintentional.

**11.6.4** In case any event shall occur that would otherwise entitle an Indemnified Party to assert an Indemnity Claim, no Losses shall be deemed to have been sustained by such party to the extent of (i) the aggregate amount of any tax savings realized or realizable by such party with respect thereto or (ii) the aggregate amount of any insurance proceeds received or receivable by such party with respect thereto.

**11.6.5** Each of Purchaser and the Sellers acknowledges and agrees that, subject to Section 14.12 and its respective rights under common law in respect of claims based on fraud, its

sole remedy against the other Parties for any matter arising out of the transactions contemplated by this Agreement shall be indemnification pursuant to this Article XI.

**11.6.6** The Escrow Fund shall be the first source available to compensate Purchaser Indemnities for the indemnification of Sellers under this Article XI and disbursements of the Escrow Fund thereunder shall be subject to provisions of the Escrow Agreement. After recourse has been made to the Escrow Fund to compensate Purchaser Indemnities for the indemnification of Sellers under this Article XI, the Representation and Warranty Insurance Policy shall be the next recourse for such compensation.

## **ARTICLE XII**

### **TERMINATION**

**12.1. Termination.** This Agreement may be terminated by:

- (a) the mutual written consent of the Parties;
- (b) by Purchaser, by at least ten days' prior written notice to the Sellers, if any of the conditions to the Closing set forth in Article VIII shall have become incapable of fulfillment and shall not have been expressly waived in writing by Purchaser;
- (c) by the Sellers, by at least ten days' prior written notice to Purchaser, if any of the conditions to the Closing set forth in Article VII shall have become incapable of fulfillment and shall have not been expressly waived in writing by KMC Holdings;
- (d) by either the Sellers or Purchaser by written notice to the each other if a court of competent jurisdiction or Governmental Authority shall have issued a statute, order, decree or ruling or taken any other action (which statute, order, decree, ruling or other action the Parties shall use their reasonable commercial efforts to lift), in each case permanently restraining, enjoining or otherwise prohibiting or making illegal the transactions contemplated by this Agreement, and such statute, order, decree, ruling or other action shall have become final and nonappealable;
- (e) (i) by the Sellers, if the Closing shall not have occurred on or before the date 180 days subsequent to date hereof as a result of the Purchaser's failure to obtain any Required Purchaser Consent, (ii) by the Purchaser, if the Closing shall not have occurred on or before the date 180 days subsequent to the date hereof as a result of the Sellers' failure to obtain any Required Sellers Consents or (iii) by either the Sellers or Purchaser if the Closing shall not have occurred on or before the date 270 days subsequent to the date hereof; or
- (f) by Purchaser, by at least ten days' prior written notice to the Sellers, if the holders of the Sellers' Indebtedness are taking any enforcement actions against (i) any of the Assets to be acquired by Purchaser hereunder or (ii) any other of Sellers' assets to the extent that such enforcement actions materially impair the value of the Assets or the Business.



*provided, however, that the right to terminate this Agreement shall not be available to any Party whose breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date.*

**12.2. *Effect of Termination.*** In the event of the termination of this Agreement pursuant to the provisions of Section 12.1, this Agreement shall become void and have no effect, without any Liability to any Person in respect hereof or the transactions contemplated hereby on the part of any Party, or their respective Representatives or Affiliates, except as specified in Sections 14.3, 14.9, 14.11 and 14.13 and except for any liability resulting from such Party's willful breach of this Agreement.

## ARTICLE XIII

### EMPLOYEES

**13.1. *Purchaser's Employment of Transferred Employees.*** Purchaser covenants and agrees that (a) Purchaser shall make offers of "at will" employment to at least 60 of the Employees listed on **Schedule 5.7.1** on terms consistent with clause (b) below (collectively, the "Offerees") and as of the Closing Date shall employ "at will" each Offeree who accepts such offer of employment; (b) for the 12-month period beginning on the Closing Date, the Offerees who accept Purchaser's job offer will be eligible to receive compensation at substantially the same rate as, and employee benefits substantially comparable in the aggregate to, the compensation and employee benefits that such Offerees received immediately prior to the Closing; and (c) Purchaser shall assume all of the Sellers' respective Liabilities for accrued and unused vacation, holiday and sick pay entitlements (the "Employee Benefit Accrued Expense"), in respect of the period prior to Closing, to each Offeree who accepts Purchaser's job offer (each, a "Transferred Employee" and, collectively, the "Transferred Employees"). Purchaser shall be under no obligations to employ any Employees other than the Transferred Employees, or to continue to employ any Transferred Employee who after the Closing Date fails to adequately perform his or her job functions, violates Purchaser's policies, or engages in any other behavior that Purchaser believes merits termination of employment. Purchaser will allow Employees other than Transferred Employees to apply for open positions with Purchaser and its Affiliates and consider, in good faith, the hiring of such Employees.

**13.2. *Responsibility for Employees on or Before the Closing.*** All medical, dental, vision, travel accident, accidental death and dismemberment, and life insurance expenses incurred by the Transferred Employees and their beneficiaries and dependents on or before the Closing Date, pursuant to any employee plan, irrespective of the time such claims are presented, shall be the responsibility of the Sellers. The Sellers shall be responsible for any medical, dental or life insurance coverage due to any Employees (and their beneficiaries and dependents) who retired on or before the Closing Date. All short-term, long-term and extended disability benefits payable to Employees and their beneficiaries and dependents who became disabled before the Closing are the responsibility of the Sellers and shall be paid directly by the Sellers or its insurance carrier to such Employees and their dependents. If any Employee is terminated from employment on or before the Closing Date by any of the Sellers, any obligations arising out of such termination, including severance, accrued vacation pay, COBRA obligations, employment discrimination complaints, unfair labor practice charges, grievance under any collective

bargaining agreement, wrongful termination and related tort claims and breach of contract claims shall be the sole responsibility of the respective Seller. Each of the Sellers will be responsible for all obligations to current or former Employees (and their dependents) who are entitled to elect COBRA continuation coverage prior to or as of the Closing Date, and to any current or former Employees (and their dependents) who become so entitled due to the consummation of the transaction contemplated herein. The Purchaser will be responsible for all obligations to Transferred Employees (and their dependents) who become entitled to elect COBRA continuation coverage after the Closing Date for reasons other than the consummation of the transaction contemplated herein. The Sellers shall be responsible for all severance expenses payable to Employees which do not become employed by Purchaser and Purchaser shall be responsible for severance expenses for all Transferred Employees employed by the Purchaser whose employment is terminated by Purchaser after the Closing Date. Each Seller agrees that, until expiration of all applicable statutes of limitation, it shall indemnify, hold harmless and defend Purchaser and its Affiliates from and against any and all claims, damages, liabilities and expenses including reasonable attorneys' fees and disbursements, incurred by Purchaser, any of its Affiliates or any of their respective Representatives arising from or in connection with any failure of the Sellers to discharge its responsibilities under this Section 13.2.

**13.3. *Covenant Not to Solicit Employees.*** The Sellers hereby covenant and agree that they shall not, without the express written consent of Purchaser, for a period of two years from the date of this Agreement (a) solicit the employment of (or assist any other entity in soliciting the employment of) any Transferred Employee or (b) encourage any Transferred Employee to terminate his or her employment relationship with Purchaser or any of its Subsidiaries; provided, however, that the foregoing shall not prevent Sellers from conducting generalized searches for employees through media advertisements, employment firms or which are not focused on Transferred Employees.

**13.4. *Retention Plan.*** Promptly after the date hereof, the Sellers shall submit to Purchaser Sellers' proposed retention plan for Employees and consider in good faith all of Purchaser's suggested changes to the proposed plan. If the Parties reach agreement on a mutually acceptable definitive plan, then the Sellers shall promptly thereafter communicate the plan to its Employees..

**13.5. *List of Transferred Employees.*** No less than fifteen and no more than thirty days prior to the Closing Date, Purchaser shall furnish KMC Holdings with a true and complete list of each Transferred Employee who has accepted Purchaser's employment offer under Section 13.1, together with the same information contemplated to be provided in **Schedule 5.7(a)**.

## ARTICLE XIV

### MISCELLANEOUS

**14.1. *Assignment.*** Neither this Agreement nor any of the rights or obligations hereunder may be assigned by the Sellers or Purchaser without the prior written consent of the other(s), except that the Parties may, without such consent, assign its right, title and interest in, to and under this Agreement to an Affiliate thereof; provided, however, that no assignment by a Party shall in any way affect its respective obligations and liabilities under this Agreement.

Subject to the foregoing sentence, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, and no other Person shall have any right, benefit or obligation hereunder.

**14.2. Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered in person, (ii) sent by facsimile transmission, (iii) sent by registered or certified mail (postage prepaid and return receipt requested) or (iv) sent by next-day or overnight mail or delivery, addressed as follows:

If to Purchaser:

CenturyTel, Inc.  
100 CenturyTel Drive  
Monroe, Louisiana 71203  
Attention: R. Stewart Ewing, Jr., Chief Financial Officer  
Fax: 318-388-9488

with a copy to:

CenturyTel, Inc.  
100 CenturyTel Drive  
Monroe, Louisiana 71203  
Attention: Stacey W. Goff, General Counsel  
Fax: 318-388-9488

If to the Sellers (for all Sellers):

KMC Telecom Holdings, Inc.  
1545 Route 206  
Bedminster, NJ 07921  
Attention: William Stewart, Chief Financial Officer  
Fax: 908-719-8775

With a copy to:

Sidley Austin Brown & Wood LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Alan Epstein, Esq.  
Fax: 212-839-5599

or to such other address or to such other Person or Persons designated in writing by such Party or its counsel, as the case may be. Notices delivered pursuant to clauses (i) or (ii) of this Section shall be deemed given on the day delivered or transmitted, respectively. Notices delivered pursuant to clause (iii) (iv) of this Section shall be deemed given on the second business day following the day sent, whether or not such notice was actually received on such day. Notices delivered pursuant to clause (iv) of this Section shall be deemed given on the date of receipt of such notices as confirmed by the delivery service company.

**14.3. *Choice of Law.*** This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of New York without giving effect to the conflict of laws rules thereof to the extent that the application of the law of another jurisdiction would be required thereby. Subject to Section 14.12, each Party hereby (i) irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New York and the federal courts of the United States of America located in New York, New York solely in respect of the interpretation and enforcement of the provisions of this Agreement and of the documents referred to in this Agreement, and in respect of the transactions contemplated hereby and thereby, (ii) waives and agrees not to assert, as a defense in any action, suit or proceeding for the interpretation and enforcement hereof, or any such document or in respect of any such transaction, that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and (iii) consents to and grants any such court jurisdiction over the person of such Parties and over the subject matter of any such dispute and agree that the mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 14.2 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

**14.4. *Entire Agreement; Amendments and Waivers.*** This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, other than the Confidentiality Agreement. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

**14.5. *Allocation of the Value of Assets.*** (a) The Parties agree to allocate the Purchase Price (including the Assumed Liabilities) among the Assets as set forth on a schedule (the "Asset Allocation Schedule"), to be agreed to by arm's length negotiation between the Parties within 60 days following the Closing, in compliance with Section 1060 of the Code and the regulations promulgated thereunder. Any post-Closing adjustment to the Purchase Price shall be reflected in the final allocation of the Purchase Price among the Assets in a manner consistent with Section 1060 of the Code and the regulations promulgated thereunder.

(b) Each of the Parties agrees that it will report the sale of the Assets on all federal, state, local Tax returns and Tax forms that are filed for the Tax year in which the Closing occurs in a manner consistent with the information that is set forth on the Asset Allocation Schedule and shall make available (or send a copy) to the other Parties, upon written request, IRS Form 8594 required to be filed by each of the Parties with respect to the transactions contemplated hereby in accordance with Section 1060 of the Code. Each of the Parties further agrees that it will take no position inconsistent with the information that is set forth on the Asset Allocation Schedule on any applicable Tax Return, in any audit or proceeding before any taxing authority, in any report made for Tax, financial accounting or any other purpose, or otherwise. In the event that the Allocation is disputed by any taxing authority, the party receiving notice of the dispute shall promptly notify the other parties hereto concerning resolution of the dispute.

(c) Notwithstanding any other provision of this Agreement, the provisions of this Section 14.5 shall survive the Closing without limitation.

**14.6. Bulk Sales.** Purchaser and the Sellers each waive any compliance of the other Party with the provisions of any applicable "Bulk Sales" laws.

**14.7. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**14.8. Invalidity.** In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

**14.9. Expenses.** Purchaser shall pay the cost of any sales and transfer Taxes, recording and transfer fees arising from the purchase and sale of the Assets pursuant to this Agreement and pay all costs and expenses associated with the transfer to the Purchaser of all third party circuits or services associated with the Business, including all circuits or services listed in the section captioned "Included Circuits" on **Schedule 1(a)** hereto. Purchaser shall provide the Sellers with resale or similar exemption certificates as is appropriate. Except as otherwise provided in this Agreement, the Parties will each be liable for its respective fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby. Sellers and their Affiliates shall be responsible for payment of any costs incurred to terminate circuits required to be terminated in connection with the sale of the Assets, provided that Purchaser shall be responsible for such costs if they are incurred as a result of Purchaser's decision to disconnect a circuit that is exclusively related to the delivery of Services in any Market.

**14.10. Publicity.** Except as required by Applicable Law, no Party shall (nor shall it permit its Affiliates to) make any public announcement regarding the transactions contemplated hereby without the prior written approval of the other Party. If a Party is required by Applicable Law to make a public announcement in respect of this Agreement or the transactions contemplated hereby, then the Parties will consult with each other before making such public announcement.

**14.11. Confidential Information.** The Parties acknowledge that the transaction described herein is of a confidential nature and shall not be disclosed except to Representatives, advisors and Affiliates, or as required by Applicable Law, until such time as the Parties make a public announcement regarding the transaction as provided in Section 14.10. In the event this Agreement is required to be filed with any Governmental Authority, the filing Party shall request that it be submitted on a confidential, non-public basis in accordance with the applicable rules of such Governmental Authority.

**14.12. Remedies.** Each Seller acknowledges and agrees that a violation of any of the covenants set forth in Section 10.7(a) or 13.3 will cause immediate and irreparable injury to Purchaser, for which injury there may be no adequate remedy at law. Each Seller expressly agrees that in the event of the actual or threatened breach of any such covenants by Sellers or

their Affiliates, Purchaser, its successors, assigns and Affiliates shall be entitled to, in addition to all other remedies of law or in equity, an immediate injunction by a court of competent jurisdiction preventing and restraining such breach.

**14.13. *Connection; Services Agreement.*** Sellers and their Affiliates agree (i) to use their commercially reasonable efforts to allow Purchaser and its Affiliates to connect their networks into Sellers' networks in the Markets as soon as reasonably practicable subsequent to the date hereof and as allowed by Applicable Laws. Sellers further agree that between the date hereof and the Closing Date, subject to Applicable Laws, to provide Purchaser access to Sellers' networks at no costs, except for any out-of-pocket or incremental costs of Sellers for performing services to Purchaser in connection with providing such access and provided that all costs incurred by Purchaser for connecting to Sellers' networks shall be borne by Purchaser and (ii) the Parties shall use reasonable commercial efforts to negotiate a services agreement, based on market terms, to provide services by Sellers to Purchaser after the date hereof.


**14.14. *Third Party Beneficiaries.*** Sellers and Purchasers agree that the holders of the Sellers' Indebtedness are intended third party beneficiaries of the respective undertakings in connection with this Agreement; provided, however, the holders of the Sellers' Indebtedness shall not have any rights in excess of those granted to the Sellers hereunder.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Asset Purchase Agreement to be duly executed on its behalf by its officer thereunto duly authorized as of the day and year first above written.

**SELLERS:**

**KMC TELECOM HOLDINGS, INC.**

By:   
Its: William H. Stewart  
Chief Financial Officer

**KMC TELECOM LLC**

By:   
Its: William H. Stewart  
Chief Financial Officer

**KMC TELECOM II LLC**

By:   
Its: William H. Stewart  
Chief Financial Officer


**KMC TELECOM III LLC**

By:   
Its: William H. Stewart  
Chief Financial Officer

**KMC TELECOM OF VIRGINIA, INC.**

By:   
Its: William H. Stewart  
Chief Financial Officer

**KMC TELECOM FINANCIAL SERVICES  
LLC**

By:   
Its: William H. Stewart  
Chief Financial Officer

**PURCHASER:**

**CENTURYTEL ACQUISITION LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

## JOINDERS

A. CenturyTel, Inc. hereby irrevocably, perpetually and unconditionally guaranties the full and timely respective payment, performance and discharge by Purchaser of all of Purchaser's obligations under this foregoing Asset Purchase Agreement, including Purchaser's obligations to pay the Purchase Price under Section 2.2 and make indemnity payments under Article XI (the "Guaranteed Obligations") on the terms and subject to the conditions of this foregoing Asset Purchase Agreement. If Purchaser fails timely to pay, perform or discharge any Guaranteed Obligation, CenturyTel, Inc. shall forthwith pay, perform or discharge such Guaranteed Obligation, and shall further pay all reasonable expenses, including attorneys' fees, that may be incurred by the Sellers or their Affiliates in enforcing such Guaranteed Obligations and in enforcing this Guaranty.

IN WITNESS WHEREOF, CenturyTel, Inc. has caused this Joinder to be signed by its duly authorized officer as of the date of this Asset Purchase Agreement.

**CENTURYTEL, INC.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

B. KMC Data Holdco LLC and KMC Data Holdco Sub LLC each hereby join in this Agreement for the sole purpose of agreeing to be bound by the provisions of Section 10.7 and Article XIV of this foregoing Asset Purchase Agreement, as fully as if such each such company was a signatory hereto.

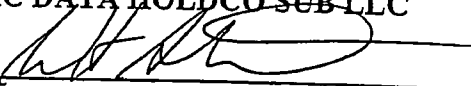
IN WITNESS WHEREOF, each of the below signed companies have caused this Joinder to be signed by its duly authorized officer as of the date of this Asset Purchase Agreement.

**KMC DATA HOLDCO LLC**

By:   
Its: \_\_\_\_\_

**William H. Stewart**  
**Chief Financial Officer**

**KMC DATA HOLDCO SUB LLC**

By:   
Its: \_\_\_\_\_

**William H. Stewart**  
**Chief Financial Officer**